Tennessee Code Annotated

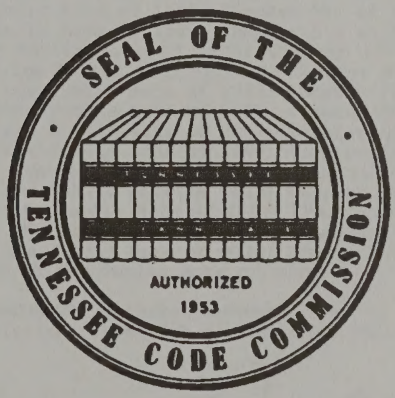
Volume 2A

2021 Replacement

Updated through the 2021 First Extraordinary and 2021 Regular Sessions of the General Assembly

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the Tennessee Code Commission



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ISBN 978-1-66331-278-5

(Pub.48205)

CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Paige A. Seals, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Tennessee Code Annotated, Section 1-1-110, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this Replacement Volume 2A; that the text of each section of the statutes of Tennessee printed or appearing in this Replacement Volume has been compared with the original section appearing in the published copies of the Public Acts; and, with the exception of changes permitted by Tennessee Code Annotated, Section 1-1-108, and with the exception of changes made necessary due to repeal by implication, express repeal and amendments by implication, the Code sections appearing in this Replacement Volume as codification of the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021 are true and correct copies of such sections as codified by Chapter 6 of the Public Acts of 1955; Chapter 1 of the Public Acts of 1957, of the Public Acts of 1959, of the Public Acts of 1961, of the Public Acts of 1963, of the Public Acts of 1965, of the Public Acts of 1967, of the Public Acts of 1969; Chapter 354 of the Public Acts of 1970; Chapter 1 of the Public Acts of 1971; Chapter 441 of the Public Acts of 1972; Chapter 1 of the Public Acts of 1973; Chapter 414 of the Public Acts of 1974; Chapter 1 of the Public Acts of 1975; Chapter 382 of the Public Acts of 1976; Chapter 1 of the Public Acts of 1977; Chapter 496 of the Public Acts of 1978; Chapter 1 of the Public Acts of 1979; Chapter 444 of the Public Acts of 1980; Chapter 1 of the Public Acts of 1981; Chapter 543 of the Public Acts of 1982; Chapter 1 of the Public Acts of 1983; Chapter 483 of the Public Acts of 1984; Chapter 2 of the Public Acts of 1985; Chapter 523 of the Public Acts of 1986; Chapter 786 of the Public Acts of 1986; Chapter 4 of the Public Acts of 1987; Chapter 458 of the Public Acts of 1988; Chapter 5 of the Public Acts of 1989; Chapter 668 of the Public Acts of 1990; Chapter 28 of the Public Acts of 1991; Chapter 528 of the Public Acts of 1992; Chapter 1 of the Public Acts of 1993; Chapter 543 of the Public Acts of 1994; Chapter 1 of the Public Acts of 1995; Chapter 554 of the Public Acts of 1996; Chapter 1 of the Public Acts of 1997; Chapter 574 of the Public Acts of 1998; Chapter 235 of the Public Acts of 1999; Chapter 574 of the Public Acts of 2000; Chapter 52 of the Public Acts of 2001; Chapter 491 of the Public Acts of 2002; Chapter 1 of the Public Acts of 2003; Chapter 437 of the Public Acts of 2004; Chapter 1 of the Public Acts of 2005; Chapter 507 of the Public Acts of 2006; Chapter 1 of the Public Acts of 2007; Chapter 607 of the Public Acts of 2008; Chapter 2 of the Public Acts of 2009; Chapter 624 of the Public Acts of 2010; Chapter 41 of the Public Acts of 2011; Chapter 582 of the Public Acts of 2012; Chapter 1 of the Public Acts of 2013; Chapter 530 of the Public Acts of 2014; Chapter 27 of the Public Acts of 2015; Chapter 569 of the Public Acts of 2016; Chapter 30 of the Public Acts of 2017; Chapter 536 of the Public Acts of 2018; Chapter 1 of the Public Acts of 2019; Chapter 518 of the Public Acts of 2020; and Chapter 33 of the Public Acts of 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 15th day of July, 2021.

Paige A. Seals
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that true and correct copies of the following acts, Chapter 6 of the Public Acts of the 79th General Assembly; and Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; Chapters 1 and 441 of the 87th General Assembly; Chapters 1 and 414 of the 88th General Assembly; Chapters 1 and 382 of the 89th General Assembly; Chapters 1 and 496 of the 90th General Assembly; Chapters 1 and 444 of the 91st General Assembly; Chapters 1 and 543 of the 92nd General Assembly; Chapters 1 and 483 of the 93rd General Assembly; Chapters 2, 523, and 786 of the 94th General Assembly; Chapters 4 and 458 of the 95th General Assembly; Chapters 5 and 668 of the 96th General Assembly; Chapters 28 and 528 of the 97th General Assembly; Chapters 1 and 543 of the 98th General Assembly; Chapters 1 and 554 of the 99th General Assembly; Chapters 1 and 574 of the 100th General Assembly; Chapters 235 and 574 of the 101st General Assembly; Chapters 52 and 491 of the 102nd General Assembly; Chapters 1 and 437 of the 103rd General Assembly; Chapters 1 and 507 of the 104th General Assembly; Chapters 1 and 607 of the 105th General Assembly; Chapters 2 and 624 of the 106th General Assembly; Chapters 41 and 582 of the 107th General Assembly; Chapters 1 and 530 of the 108th General Assembly; Chapters 27 and 569 of the 109th General Assembly; Chapters 30 and 536 of the 110th General Assembly; that Chapters 1 and 518 of the 111th General Assembly; and that Chapter 33 of the 112th General Assembly of the State of Tennessee, the originals of which are on file in the Office of the Secretary of State, were transmitted to the Tennessee Code Commission for publication in this Replacement Volume 2A.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee, at Nashville, on the 15th day of July, 2021.

Secretary of State

Preface

This Replacement Volume 2A of the official Tennessee Code supersedes its 2015 predecessor, and was made necessary by new and amendatory legislation. This volume was prepared by the editorial staff of the publisher with the assistance of Paige A. Seals, Revisor of Statutes and Executive Secretary for the Tennessee Code Commission.

This volume contains Title 4 (State Government).

Notes in this volume are to the following sources:

South Western Reporter, 3d Series
Supreme Court Reporter
Federal Reporter, 3d Series
Federal Supplement, 2d Series
Bankruptcy Reporter
Opinions of the Attorney General
Tennessee Bar Journal
Tennessee Law Review
University of Memphis Law Review
Vanderbilt Law Review
Workers' Compensation Appeals Board Decisions

Suggestions, comments, or questions about the Tennessee Code Annotated are always welcome. You may call us toll free at (800) 833-9844, email us at customer.support@lexisnexis.com, or write Tennessee Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

Visit our internet home page at **www.lexisnexis.com** for an online bookstore, technical support, customer service, and other company information.

August 2021 LexisNexis

User's Guide

This guide is designed to help you get the most out of your Tennessee Code Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

—Advance Code Service
—Advance Legislative Service
—Amendments
—Analyses
—Attorney General Opinions
—Code Status
—Compiler's Notes and Code Commission Notes
—Cross References
—Court Rules
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—Replaced Volumes
—Section Headings
—Sentencing Commission Comments
—Superseded Statutes
—Tables of Contents
—Tables Volume
—Textbooks
—Unconstitutional Statutes

If you have a question not addressed by the User's Guide, or comments about your Code service, please call us toll free at (800) 833-9844, email us at customer.support@lexisnexis.com, or write Tennessee Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish Tennessee Advance Code Service pamphlets. The Advance Code Service keeps your Code as up-to-date as possible by providing notes to cases, opinions of the Attorney General, and law reviews received after the cutoff for inclusion in the preceding Supplement, as

well as other pertinent information. Advance Code Service pamphlets are cumulative, so that you need retain only the latest pamphlet to have all the updated material published since the preceding Supplement.

ADVANCE LEGISLATIVE SERVICE

Advance Legislative Service pamphlets contain photoreproductions of Tennessee legislation. They are sent to all subscribers, as part of the annual supplement service, within weeks of an act's passage. Pamphlets also contain a table of contents, a table of Code sections affected by new laws, informative notations in the margins of acts, and an index. All these aids help you assess the impact of new legislation between the time it first becomes available and publication of the Code supplement.

AMENDMENTS

Amendment notes describe exactly what changes the legislature has made in the statute and are written so that you can reconstruct the language of the statute as it existed prior to amendment. These notes appear only in the annual pocket part supplements following each section which has been amended within the past two years. Where an amendment note states that certain provisions have been rewritten, and the former version is not set out in the note, the presumption is that the former version may be found in the bound volume.

ANALYSES

In addition to the table of contents appearing at the beginning of each bound volume, each title and chapter appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title or chapter and enables you to see at a glance the content of the title or chapter without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Citations to Opinions of the Attorney General and Reporter of Tennessee are carried in supplement pamphlets, beginning with opinions issued in 1983. Although these opinions are advisory only, they are well-researched opinions of law and contain useful discussions of Tennessee statutes. Citations to opinions which concern the constitutionality of provisions, or which the Code Commission wishes to retain for other reasons, will appear in Code Commission Notes in replacement volumes.

CODE STATUS

Tennessee Code Annotated is the official Code of Tennessee. It was adopted in 1955. Code supplements and replacement volumes are also enacted into law following their publication, in order to assure the integrity and official character of all Code text. The Code is prepared under the auspices of the Tennessee Code Commission and with the assistance of its staff. For the authority of the Commission and other statutes relating to the Code, see title 1 of the Code.

COMPILER'S NOTES AND CODE COMMISSION NOTES

If nothing else, compiler's notes and code commission notes should always be read because they point out important information or special circumstances concerning a statute.

Code commission notes are prepared under the direct supervision of the Tennessee Code Commission to convey information that is not apparent on the face of a Code section.

Repealed statutes have compiler's notes citing the legislative history of the repealed section, the chapter and section of the public act responsible for the repeal, and a reference to new statutory provisions, if any, which replace the repealed statute. Transferred, superseded, obsolete and unconstitutional statutes have similar notes.

COURT RULES

A softcover Court Rules Annotated two-volume set is included in your Code set. These volumes are supplemented once each year in November and are replaced annually. Rules of the Supreme Court, the Board of Judicial Conduct, the Court of Appeals, and the Court of Criminal Appeals, rules of appellate, civil, criminal and juvenile procedure and rules of evidence, as well as local rules of practice and procedure in the courts of certain counties are included, along with appropriate annotations and indexes. Rules are printed essentially in the form in which they have been promulgated, with only minor editing for stylistic consistency.

Advisory Commission Comments which have been added after the original comments have, in brackets following each additional paragraph of comment, the date the paragraph was added.

CROSS REFERENCES

Cross references refer you to other statutes which may affect a law or place it in context. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

DISCIPLINARY BOARD OPINIONS

Notes under this heading appear in Volume 2 of the Court Rules and its supplement, and refer you to opinions of the Board of Professional Responsibility of the Supreme Court of Tennessee.

EFFECTIVE DATES

Effective date notes appear only in the pocket part supplements to the bound volumes. These notes show the effective date for enactments and amendments made during the past two years. An effective date note will appear under each section enacted or amended, except where an entire chapter or part has been enacted, in which case the note will appear only under the first and last sections of the chapter or part.

Where repeals and enactments are postponed, bracketed dates in the boldfaced catchline and explanatory information in the compiler's notes enable you to ascertain the valid law both before and after the postponed effective date. In the case of postponed amendments, the current law will be set out

followed by a separate postponed version in italics font, both with bracketed dates in the catchlines.

HISTORICAL CITATION

The historical citation appears in brackets immediately following the text of the statute. The historical citation includes the year, chapter and section of all public acts enacting or amending the statute. By finding these public acts in the session laws, you can trace the history of a section from its original enactment to its present form.

The historical citation also includes references to the sections of former codes in which the statute was previously compiled (as in "Code 1932, § 325" cited in the historical citation to § 4-3-1803). Amendments to the statute which have been implied by subsequent legislation rather than specifically mandated are indicated by "impl. am." followed by the public act chapter and section number. Statutes which have been transferred from former section numbers within this Code cite the former section number in the historical citation. For instance, in the historical citation for § 4-3-203, "T.C.A. (orig. ed.), § 4-308" indicates that § 4-3-203 was transferred from § 4-308 which appeared in the original edition of the 1955 Code. In the historical citation for § 4-3-1009, "T.C.A., § 4-328" indicates that § 4-3-1009 was transferred from § 4-328 which appeared in either a replacement volume or a pocket part supplement to the original edition of the 1955 Code.

When used in conjunction with the Tables Volume (see *Tables Volume* below), the historical citation can be an invaluable aid in legal research.

In the Court Rules volume, court rules carry historical citations showing the date of any amendment to a rule. The date a set of rules was originally promulgated appears beneath the heading to the set.

INDEXES

The General Index volumes are updated and replaced annually. In addition, at the back of each bound volume in the set, there is a volume index which indexes all the material contained in that particular volume.

Also included with the index volumes are the following items of interest: a Title and Chapter Index, which is a short index for use by those familiar with terminology used in the T.C.A.; POPULAR NAMES OF ACTS main heading; SHORT TITLES main heading; and the Index to Uncodified Public Chapters.

As accurate and thorough as these indexes are, there is no such thing as an index that is affordable, convenient, *and* perfect. Your best defense against index wild goose chases is familiarity with indexing techniques. To that end, a list of Suggestions for Fast, Effective Use of the Index has been included on the inside front cover of each index volume, and a more detailed treatment is given in the Foreword to the Index.

LAW REVIEWS

Articles from the Tennessee law school law reviews and other professional journals are cited under each statute referred to in the article.

NOTES TO DECISIONS

All state and federal cases which construe or apply Tennessee law or the

Tennessee or U.S. Constitutions have been annotated and are cited under the pertinent statutes. Where a decision has been reviewed by a higher court, the subsequent judicial history and disposition is noted in the case citation if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist you in locating pertinent notes. The catchlines are arranged in logical order. Where there are two or more catchlines, an "analysis" listing all the catchlines precedes the annotations.

Where a statute has been amended or repealed and replaced with similar subject matter, case notes construing or applying the former statute are frequently retained under "Notes to Decisions."

Where a group of case notes applies to more than one statute in the same volume, the case notes are usually cited under the most appropriate statute; a cross-reference is inserted under the "Notes to Decisions" of the related statutes, under the appropriate catchline, referring you to the section carrying the pertinent case notes.

NUMBERING SYSTEM

A new numbering system has been implemented by the Code Commission which facilitates the organization of sections. This system divides existing chapters into "parts" so that several related, but distinct, subjects can be compiled in one chapter. The new numbering system consists of three-tier numbers rather than the former two-tier numbers. Thus, former chapter 29 of title 4 (former §§ 4-2901 — 4-2926) was redesignated in 1979 and organized into two parts, §§ 4-29-101 — 4-29-120 and 4-29-201 — 4-29-207. The number in the first tier represents the title; the second tier represents the chapter; and the last tier represents the part and section.

4	-	29	-	1	10
Title		Chap.		Part	Section

For example, § 4-29-110 is the tenth section in the first part of chapter 29 of title 4. Section 4-29-203 is the third section in the second part of chapter 29 of title 4.

Where former two-tier section numbers have been transformed into this three-tier system, a parallel reference table is provided showing the disposition of the former sections. Furthermore, the former two-tier section number appears in the history line of each section transformed to the three-tier system.

Code sections are divided into subsections. A subsection may be further divided into subdivisions. The first level of a section is a subsection, and all subsequent divisions of that subsection are referred to as subdivisions. A subsection is designated by a lower case letter in parenthesis. If a section has only one subsection, the lower case designation does not appear, even if that subsection is subdivided; any subsequent division of that single subsection is

designated and referred to by the appropriate subdivision designation. The designations are as follows:

First level (subsections): (a), (b), (c), etc.
Second level (subdivisions): (1), (2), (3), etc.
Third level (subdivisions): (A), (B), (C), etc.
Fourth level (subdivisions): (i), (ii), (iii), etc.
Fifth through eighth levels (subdivisions) repeat the above designations but italicize the designations:
(a), *(b)*, *(c)*, etc.
(1), *(2)*, *(3)*, etc.

For example, if § 1-1-101 is divided into two paragraphs designated as (a) and (b), those designated paragraphs are referred to as subsections, subsection (a) and subsection (b). If either subsection is further divided, those further divided levels of the subsection are subdivisions.

Therefore, if subsection (a) is divided into three additional levels: (a)(1), (a)(2), and (a)(3), those levels within subsection (a) are referred to as subdivisions: subdivision (a)(1), subdivision (a)(2), and subdivision (a)(3). Any subsequent further division of a subdivision is simply another subdivision. If subdivision (a)(1) is divided into three additional levels, (a)(1)(A), (a)(1)(B), and (a)(1)(C), those levels are also called subdivisions, as are the levels if subdivision (C) is further divided into additional levels, which would be subdivisions (i), (ii), (iii), etc. Example citation: § 1-1-101(a)(1)(A)(i).

OBSOLETE STATUTES

Where the Tennessee Code Commission has determined that, in light of more recent legislation or court decisions, a statute is no longer valid, the statute has been omitted with an indication that it is "Obsolete."

PARALLEL REFERENCE TABLES

Certain titles, chapters and groups of sections which have been repealed in their entirety and replaced with similar provisions or which have been transferred to new section numbers are accompanied by a parallel reference table which refers you from the former section number to the section number of the present provisions. These tables generally appear at the front of the bound volume or preceding the title or chapter in the supplement.

REPEALED STATUTES

Statutes which have been repealed are so indicated in brackets following the section number. Compiler's notes containing the historical citation of the former statute, the legislation responsible for the repeal, and present statutory provisions concerning the same subject matter (if any) appear after each repealed section or after the first section of a repealed chapter. References to repealed statutes are ordinarily dropped upon volume revision.

REPLACED VOLUMES

The Code is regularly updated and streamlined by the replacement of volumes. Although a current set of the Tennessee Code Annotated contains the

currently applicable statutes, users are encouraged to retain replaced volumes and their supplements for historical reference.

SECTION HEADINGS

According to § 1-3-109, section headings or "catchlines" are not to be construed as part of the law. The Code Commission has authority, under § 1-1-108(a), to "change the wording of and prepare new section headings and symbols." Working together, the Code Commission and the publisher continuously review catchlines to ensure that they give all necessary information as briefly and accurately as possible. Generally, T.C.A. catchlines give no more information than is necessary to distinguish one section from others you might consult. Thus, the catchline for § 1-3-109 reads "Section headings and histories," not "Section headings and histories not part of law"; the longer form would be used only if the chapter had another section that focused on headings and histories from a different angle. In addition, T.C.A. catchlines often use popular terminology in an attempt to shed light on a section's meaning and save you valuable research time, even though the popular term appears nowhere in the section and may be less accurate than its technical equivalent.

The Code Commission and the publisher invite your suggestions on ways to improve particular catchlines.

SENTENCING COMMISSION COMMENTS

These comments, contained under sections of the criminal laws amended by chapter 591 of the Public Acts of 1989, were written to the text of the sections of chapter 591, as codified herein. These comments have not been revised to reflect amendments to these sections after 1989. They have been retained to provide guidance on the original intent of those sections which may not be affected by later amendments.

SUPERSEDED STATUTES

A statute which has been superseded by the enactment of subsequent legislation is omitted and indicated as "Superseded" in brackets following the section number. A compiler's note containing information concerning the superseding provisions accompanies a superseded statute.

TABLES OF CONTENTS

Each bound volume carries a table of contents listing titles, chapters, and parts. In addition, a complete table of T.C.A. titles is updated and published annually in the supplement pamphlet for Volume 1. This table, which follows the Preface and precedes the User's Guide, helps you find the T.C.A. volume you need, and also helps you keep track of titles that have been relocated due to volume replacement.

TABLES VOLUME

The Tables Volume (Volume 13) of the Tennessee Code Annotated is one of the most helpful tools in legal research.

Included in the Tables Volume are parallel tables referring the user from section numbers in former codes to section numbers in the original 1955

Tennessee Code Annotated. Also in Volume 13 is a table of former and current section numbers for Code sections whose numbers have changed since 1955. This table provides a reference to Code sections renumbered in the conversion from the former two-tier numbering system to the new three-tier system.

Disposition tables list each chapter and section of all the Tennessee public acts passed by the legislature and indicate where each has been compiled in the present Tennessee Code Annotated. Public act sections which were repealed prior to the publication of the original Tennessee Code Annotated in 1955 have been omitted in order to reduce the size of the Tables Volume; however, sections repealed after 1953 are indicated as repealed with a citation to the public act chapter and section responsible for the repeal. Public act sections which have not been compiled are indicated with notations such as "special," "temporary," "repealing," "effective date," "separability," "emergency," "legislative intent," "unconstitutional," etc.

The disposition tables and the historical citations following the statutes work in tandem (see *Historical Citation*, above). In order to determine where a particular public act chapter or section has been compiled, refer to the disposition tables. For instance, the tables show that Public Act 1965, ch. 181, § 7 has been compiled in § 11-9-107. The historical citation following § 11-9-107 indicates that it was enacted by Public Acts 1965, ch. 181, § 7 and that it has not been amended. The object is to help you find your way from the public acts to the compiled section, or from the section to the public acts.

Other helpful information is contained in the Table volumes or its current supplement, including mortality tables, annuity valuation tables, a table of county populations based on the federal decennial census, and a table showing the incorporation date, population, and basic charter of Tennessee municipalities.

TEXTBOOKS

Citations to some of the standard Tennessee treatises have been included where they refer to Tennessee statutes.

UNCONSTITUTIONAL STATUTES

Statutes determined to be unconstitutional are omitted and indicated as "Unconstitutional" in brackets following the section number. A compiler's note giving the court decisional authority accompanies such section.

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TENNESSEE CODE ANNOTATED

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STATE GOVERNMENT

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CHAPTER 1

GENERAL PROVISIONS

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PART 1

SOVEREIGNTY AND JURISDICTION

4-1-101. Sovereignty coextensive with boundary.

The sovereignty and jurisdiction of the state is coextensive with the boundaries of the state, but the extent of such jurisdiction over places that

have been or may be ceded to the United States is qualified by the terms of such cession.

History.

Code 1858, § 70; Shan., § 82; Code 1932, § 96; T.C.A. (orig. ed.), § 4-101.

Cross-References.

Acts ceding jurisdiction to federal government left unrepealed, § 1-2-105.

Jurisdiction of criminal offenses, title 40, ch. 1.

Residents of areas ceded to federal government entitled to vote, § 2-2-104.

Textbooks.

Tennessee Jurisprudence, 22 Tenn. Juris., State, § 4.

NOTES TO DECISIONS

Analysis

1. Classification of Property.
2. Property Ceded to Federal Government.
3. —Jurisdiction.
4. —Commerce.
5. —Taxation.

1. Classification of Property.

The state may impress upon movable property any character it may choose and no other state can impugn or vary that character. It may be impressed with the character of real estate and pass by inheritance as such under the laws of the state where located, although the owner may live and die in another state. Jones v. Marable, 25 Tenn. 116, 1845 Tenn. LEXIS 38 (1845); Fidelity & Deposit Co. v. Crenshaw, 120 Tenn. 606, 110 S.W. 1017, 1908 Tenn. LEXIS 47 (1908).

2. Property Ceded to Federal Government.

Where land is ceded to or purchased by the United States with the consent of the state legislature, under U.S. Const., art. 1, § 8, clause 17, the federal courts have jurisdiction of the prosecution for a crime committed thereon, to the exclusion of the state courts. But where the federal government is a proprietor by purchase without cession, the rule does not apply; and failure of such government to file map in office of county court clerk (now county clerk) to show the consent of the state to acquisition of the property by the United States leaves the jurisdiction in the state courts. Gill v. State, 141 Tenn. 379, 210 S.W. 637, 1918 Tenn. LEXIS 99 (1919).

3. —Jurisdiction.

Acts 1867, ch. 44, ceding to the United States jurisdiction over national cemeteries in Tennessee, did not deprive the state of jurisdiction over offenses committed within such cemeteries, nor of its right to serve process therein. Wills v. State, 50 Tenn. 141, 1871 Tenn. LEXIS 78 (1871).

The state court has jurisdiction of perjury committed in the trial of a cause in a state court held in the custom house of the United States, by express permission of the federal authorities, under a statute authorizing the state court to be held at places other than the courthouse, or place designated by law, although exclusive jurisdiction had been ceded by a state statute to the United States over the land on which the custom house is situated. Exum v. State, 90 Tenn. 501, 17 S.W. 107, 1891 Tenn. LEXIS 32, 25 Am. St. Rep. 700, 15 L.R.A. 381 (1891).

The exclusive jurisdiction of the United States over the land upon which a soldiers' home was erected was not affected by the fact that the land was conveyed to the National Home, a corporation, and not directly to the United States, because such home was owned and managed by the United States, and the land was in fact purchased by the United States. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299, 1906 Tenn. LEXIS 51 (1906).

A state statute attempting to confer jurisdiction on the state courts for the prosecution of a crime committed upon property ceded or purchased by the federal government, with the consent of the state legislature, under U.S. Const., art. 1, § 8, clause 17, must necessarily be unconstitutional. Gill v. State, 141 Tenn. 379, 210 S.W. 637, 1918 Tenn. LEXIS 99 (1919).

Plea that United States had "exclusive jurisdiction" over certain army bases so as to allow transportation company to escape payment of privilege tax on commodities transported to such bases could not be raised by the transportation company but if available at all would only be available to the United States government. Motor Transport Co. v. McCanless, 182 Tenn. 659, 189 S.W.2d 200, 1945 Tenn. LEXIS 264 (1945).

4. —Commerce.

Transportation of commodities from a point within the state to United States reservations within the state did not amount to transportation of goods in interstate commerce so as to exempt transportation from payment of privilege tax on such business. Motor Transport Co. v. McCanless, 182 Tenn. 659, 189 S.W.2d 200, 1945 Tenn. LEXIS 264 (1945).

5. —Taxation.

Lands located in Tennessee, which are acquired by the United States through sale for direct taxes levied pursuant to an act of congress, are not subject to state taxation while so owned by the United States, and their assessment for state taxes creates no lien on the land that can be enforced after the United States has parted with title. Van Brocklin v. Tennessee, 117 U.S. 151, 6 S. Ct. 670, 29 L. Ed. 845, 1886 U.S. LEXIS 1822 (1886).

Motor transportation company was subject to payment of privilege tax for engaging in transportation of commodities from point within the state to government reservations within the state. Motor Transport Co. v. McCanless, 182 Tenn. 659, 189 S.W.2d 200, 1945 Tenn. LEXIS 264 (1945).

4-1-102. Protection of territory.

The governor and all subordinate officers of this state are empowered to protect the territory of this state, within its defined limits in all the courts of the country, and the governor may employ counsel for this purpose whenever, in the governor's judgment, it becomes necessary in order to protect this state and the citizens of the commonwealth against illegal encroachments upon their rights, the fee for such services to be fixed by the governor and approved by the attorney general and reporter.

History.

Acts 1889, ch. 222, § 2; Shan., § 81; Code 1932, § 95; T.C.A. (orig. ed.), § 4-104.

4-1-103. Concurrent jurisdiction of boundary waters.

This state has concurrent jurisdiction on the waters of any river that forms a common boundary between this and any other state.

History.

Code 1858, § 72; Shan., § 84; Code 1932, § 97; T.C.A. (orig. ed.), § 4-102.

Cross-References.

County boundary waters, § 5-1-102.

4-1-104. Mississippi River — Criminal jurisdiction.

(a) The criminal jurisdiction of this state is extended as follows: Beginning at a point where the north boundary line of Tennessee intersects the east bank of the Mississippi River and extending west along a line in extension of and parallel to the north boundary of Tennessee to the west bank of the Mississippi River, in the state of Missouri; thence south along that bank, passing the line dividing the states of Missouri and Arkansas, and following the meanders of that river bank to a point on the west bank of that river where a line drawn east and parallel to the south boundary of Tennessee would intersect the west bank of the Mississippi River; thence east along that line to a point where the south boundary line of Tennessee intersects the east bank of the Mississippi River.

(b) This state and her sister states, Arkansas and Missouri, have concurrent criminal jurisdiction over the parts of the territory lying opposite them and between the lines extending parallel to their north and south boundaries.

(c) This section shall take effect as to the states of Arkansas and Missouri, or either of them, when these states, or either of them, pass a similar act governing the territory described in subsection (a), opposite them and between their north and south boundaries; this section to take effect from and after its

passage as to all that part of the territory so described that is included within the boundaries east of the states of Arkansas and Missouri.

History.
Acts 1915, ch. 123, §§ 1-3; Shan., §§ 80a1-80a3; Code 1932, §§ 92-94; T.C.A. (orig. ed.), § 4-103.

Cross-References.
Boundary with Missouri and Arkansas, § 4-2-107.

Textbooks.
Tennessee Jurisprudence, 22 Tenn. Juris., State, § 8.

NOTES TO DECISIONS

Analysis

1. Validity of Section.
2. Effective Date of Compact.

1. Validity of Section.
This section is not invalid on the ground that congress has not consented to such an agreement with Arkansas and Missouri, for the consent of congress may be implied, or it may give its consent later, in case such an agreement is made. Couch v. State, 140 Tenn. 156, 203 S.W. 831, 1918 Tenn. LEXIS 31 (1918).

2. Effective Date of Compact.
When the state of Arkansas passed an act conferring criminal jurisdiction upon the state of Tennessee over the Mississippi River flowing between the two states, upon the passage of a similar act by the state of Tennessee conferring such criminal jurisdiction upon the state of Arkansas, the compact between the two states became binding. Couch v. State, 140 Tenn. 156, 203 S.W. 831, 1918 Tenn. LEXIS 31 (1918).

4-1-105. Retrocession of federal jurisdiction.

(a) The consent of this state is hereby given to the retrocession of jurisdiction by the United States over land owned by the United States within the boundaries of this state, and the governor of this state is hereby authorized to accept for this state such retrocession of jurisdiction.

(b) Retrocession of jurisdiction shall be effected by written notice by the principal officer of the agency of the United States having supervision and control over the land by metes and bounds and stating that legislative, executive and judicial jurisdiction is to be retroceded to this state and the filing of a statement of acceptance of jurisdiction by the governor of this state with the secretary of state of this state.

History.
Acts 1975, ch. 266, § 1; T.C.A., § 4-121.

NOTES TO DECISIONS

1. Construction.
Motion to dismiss for lack of jurisdiction filed by defendants, who were initially arrested for violations of national park service traffic regulations, was denied, because state and park service had concurrent criminal jurisdiction over state roads in federal parklands pursuant to an agreement between the state and the park service that ceded to the other concurrent criminal law jurisdiction subject to the provisions of 16 U.S.C. § 1a-3, and as accepted by the state pursuant to T.C.A. § 4-1-105. United States v. Cooper, 295 F. Supp. 2d 840, 2003 U.S. Dist. LEXIS 22205 (M.D. Tenn. 2003).

4-1-106. Federal application for cession of state jurisdiction.

(a) Whenever the United States shall desire to acquire legislative jurisdiction over any lands within this state and shall make application for that

purpose, the governor is authorized to cede to the United States such measure of jurisdiction, not exceeding that requested by the United States, as the governor may deem proper over all or any part of the lands as to which a cession of legislative jurisdiction is requested, reserving to the state such concurrent or partial jurisdiction as the governor may deem proper.

(b) The application on behalf of the United States shall state in particular the measure of jurisdiction desired and shall be accompanied by an accurate description of the lands over which such jurisdiction is desired and information as to which of such lands are then owned or leased by the United States.

(c) The cession of jurisdiction shall become effective when it is accepted on behalf of the United States, which acceptance shall be indicated, in writing upon the instrument of cession, by an authorized official of the United States and filing with the secretary of state.

History.
Acts 1975, ch. 267, § 1; T.C.A., § 4-122.

Cross-References.
Territory ceded to the United States government, Vol. 16, Index to Uncodified Public Chapters.

4-1-107. Jurisdiction reserved by state when cessions made to United States.

Notwithstanding any other law, there are reserved over any lands as to which any legislative jurisdiction may be ceded to the United States pursuant to §§ 4-1-106 — 4-1-109, the state's entire legislative jurisdiction with respect to taxation and that of each state agency, county, city, political subdivision and public district of the state; the state's entire legislative jurisdiction with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property; concurrent power to enforce the criminal law; and the power to execute any process, civil or criminal, issued under the authority of the state; nor shall any persons residing on such lands be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of such jurisdiction to the United States.

History.
Acts 1975, ch. 267, § 2; T.C.A., § 4-123.

4-1-108. Relinquishment of ceded legislative jurisdiction by United States.

(a) Whenever the United States tenders to the state a relinquishment of all or part of the legislative jurisdiction theretofore acquired by it over lands within this state, the governor is authorized to accept on behalf of the state the legislative jurisdiction so relinquished.

(b) The governor shall indicate the governor's acceptance of such relinquished legislative jurisdiction by a writing addressed to the head of the appropriate department or agency of the United States, and such acceptance shall be effective when the writing is deposited in the United States mails.

History.
Acts 1975, ch. 267, § 3; T.C.A., § 4-124.

4-1-109. Cession or acceptance — Authority of local government.

When an acceptance or cession of jurisdiction as cited in §§ 4-1-106 — 4-1-108 is sought for lands within this state concerning jurisdictional matters over which counties or municipalities, rather than the governor, have authority, agreements made under §§ 4-1-106 — 4-1-108 shall be authenticated by the appropriate representative of the United States and the competent local authority, rather than by the governor, and shall be filed with the secretary of state.

History.
Acts 1975, ch. 267, § 4; T.C.A., § 4-125.

PART 2

GRAND DIVISIONS AND STATE CAPITAL

4-1-201. Grand divisions.

There are three (3) grand divisions of the state: the eastern, middle and western.

History.
Code 1858, § 100 (deriv. Acts 1835-1836, ch. 3); Shan., § 129; Acts 1923, ch. 70; Code 1932, § 147; modified; T.C.A. (orig. ed.), § 4-109.

Law Reviews.
Tennessee Criminal Law: An Overview of the Courts and a Compendium of Tennessee Criminal Procedure, 5 Mem. St. U.L. Rev. 90 (1975).

NOTES TO DECISIONS

1. Grand Division Definition.
Since judges of intermediate appellate courts are not assigned to any district or circuit, voting by district or circuit is not required, and this is in no way changed by the requirement that no more than four of the 12 judges on each intermediate appellate court may reside in any one of three grand divisions of Tennessee; a district is a political subdivision, and while a district usually connotes a subunit of a county and may be subject to reconfiguration, a grand division refers to one of three permanently defined, large umbrella units, each composed of many counties and districts, and a grand division is not a district within the meaning of the Constitution. Hooker v. Haslam, 437 S.W.3d 409, 2014 Tenn. LEXIS 934 (Tenn. Apr. 23, 2014).

4-1-202. Eastern grand division.

The eastern division comprises the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union and Washington.

History.
Code 1858, § 101 (deriv. Acts 1835-1836, ch. 3, § 8); Acts 1885, ch. 107, § 1; 1899, ch. 150, § 1; 1903, ch. 110, § 1; 1915, ch. 9, §§ 1-3; Shan., § 130; Private Acts 1919, ch. 695; Code 1932, § 148; Acts 1933, ch. 135, § 1; C. Supp. 1950, § 148; modified; T.C.A. (orig. ed.), § 4-110.

4-1-203. Middle grand division.

The middle division comprises the counties of Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson and Wilson.

History.
Code 1858, § 102 (deriv. Acts 1835-1836, ch. 3, § 8); Acts 1885, ch. 107, § 1; 1899, ch. 150, § 1; 1903, ch. 110, § 1; 1915, ch. 9, §§ 1-3; Shan., § 131; Code 1932, § 149; Acts 1933, ch. 135, § 1; C. Supp. 1950, § 149; Acts 1965, ch. 354, § 1; T.C.A. (orig. ed.), § 4-111.

4-1-204. Western grand division.

The western division comprises the counties of Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley.

History.
Code 1858, § 103 (deriv. Acts 1835-1836, ch. 3, § 8); Shan., § 132; Code 1932, § 150; Acts 1965, ch. 354, § 1; T.C.A. (orig. ed.), § 4-112.

4-1-205. State capital.

The city of Nashville, in the county of Davidson, is the seat of the state government.

History.
Code 1858, § 74 (deriv. Const. 1834, schedule, § 2); Shan., § 92; Code 1932, § 100; T.C.A. (orig. ed.), § 4-105.

NOTES TO DECISIONS

1. General Assembly Sitting Elsewhere — Validity of Acts.
Acts passed by the general assembly at Memphis, during the Civil War, are valid. Frierson v. General Assembly of Presbyterian Church, 54 Tenn. 683, 1872 Tenn. LEXIS 106 (1872).

PART 3

STATE SYMBOLS

4-1-301. State flag or banner.

(a) The flag or banner of this state shall be of the following design, colors and proportions, to wit: an oblong flag or banner in length one and two-thirds (1⅔) times its width, the principal field of same to be of color red, but the flag or banner ending at its free or outer end in a perpendicular bar of blue, of uniform width, running from side to side, that is to say, from top to bottom of the flag or banner, and separated from the red field by a narrow margin or stripe of white of uniform width; the width of the white stripe to be one-fifth (⅕) that of the blue bar; and the total width of the bar and stripe together to be equal to one-eighth (⅛) of the width of the flag. In the center of the red field shall be a smaller circular field of blue, separated from the surrounding red field by a

circular margin or stripe of white of uniform width and of the same width as the straight margin or stripe first mentioned. The breadth or diameter of the circular blue field, exclusive of the white margin, shall be equal to one-half (½) of the width of the flag. Inside the circular blue field shall be three (3) five-pointed stars of white distributed at equal intervals around a point, the center of the blue field, and of such size and arrangement that one (1) point of each star shall approach as closely as practicable without actually touching one (1) point of each of the other two (2) around the center point of the field; and the two (2) outer points of each star shall approach as nearly as practicable without actually touching the periphery of the blue field. The arrangement of the three (3) stars shall be such that the centers of no two (2) stars shall be in a line parallel to either the side or end of the flag, but intermediate between same; and the highest star shall be the one nearest the upper confined corner of the flag.

(b)(1) It is an offense to knowingly manufacture or sell a state flag that is not in compliance with subsection (a).

(2) This subsection (b) shall apply only to flags that are manufactured, sold or offered for sale as official state flags and shall not apply to miniature flags or flags manufactured, sold or offered for sale as souvenirs, novelties, decorations or toys.

(3) A violation of this subsection (b) is considered a deceptive business practice and punishable as provided in § 39-14-127.

(c)(1) Each Tennessee state flag manufactured or otherwise produced shall have imprinted on the flag a legend or other markings, or both, sufficient to clearly indicate the proper manner in which to fly or otherwise display the Tennessee state flag.

(2) The purpose of this subsection (c) is to ensure that the public does not fly or otherwise display the Tennessee state flag in any incorrect manner, especially not upside down.

(3) For the purposes of this subsection (c), "Tennessee state flag" includes all flags that are manufactured, sold or offered for sale as official state flags.

(d) All official flags of the United States and of the state of Tennessee, purchased under a state contract, shall be manufactured in the United States.

History.

Acts 1905, ch. 498; Shan., § 92a1; Code 1932, § 101; T.C.A. (orig. ed.), § 4-106; Acts 1990, ch. 1059, § 1; 2000, ch. 640, § 1; 2005, ch. 497, § 1.

Cross-References.

Desecration of venerated object, § 39-17-311.

Display of flag in courtrooms and at courthouses, §§ 5-7-108, 5-7-109.

Attorney General Opinions.

Commercial use of the state flag, OAG 95-083, 1995 Tenn. AG LEXIS 95 (8/15/95).

4-1-302. State songs.

The official songs of this state shall be as follows:

(1) "My Homeland, Tennessee" by Nell Grayson Taylor and Roy Lamont Smith, as adopted by House Joint Resolution 36 in 1925;

(2) "When It's Iris Time In Tennessee" by Willa Mae Waid, as adopted by Acts 1935, chapter 154;

(3) "My Tennessee" by Francis Hannah Tranum, as adopted by Senate Joint Resolution 35 in 1955, as the official public school song in Tennessee;

(4) "The Tennessee Waltz" by Redd Stewart and Pee Wee King, as adopted by Senate Joint Resolution 9 in 1965;

(5) "Rocky Top" by Boudleaux and Felice Bryant, as adopted by Acts 1982, chapter 545;

(6) "The Pride of Tennessee" by Fred Congdon, Thomas Vaughn and Carol Elliot, as added by House Joint Resolution 221 in 1996, as the official song of the state of Tennessee;

(7) "Tennessee" by John R. Bean, as adopted by chapter 242 of the Public Acts of 2011; and

(8) "Amazing Grace" by John Newton, as adopted by chapter 296 of the Public Acts of 2021.

History.

Acts 1935, ch. 154, §§ 1, 2; mod. C. Supp. 1950, §§ 107.1, 107.2; T.C.A. (orig. ed.), § 4-107; Acts 1982, ch. 545, § 1; 2011, ch. 242, § 1; 2021, ch. 296, § 1.

Compiler's Notes.

1996 HJR 221 provided that "The Pride of Tennessee" by Fred Congdon, Thomas Vaughn and Carol Elliot is hereby adopted as an official song of the state of Tennessee.

For the preamble to the act concerning the recognition of "Tennessee" as an official state song and its lyrics, please refer to Acts 2011, ch. 242.

Amendments.

The 2021 amendment added (8).

Effective Dates.

Acts 2021, ch. 296, § 2. April 30, 2021.

4-1-303. State poems.

(a) The poem entitled, "Oh Tennessee, My Tennessee," by Admiral William Lawrence, is designated and adopted as an official state poem for this state, which poem reads as follows:

"Oh Tennessee, My Tennessee
What Love and Pride I Feel for Thee.
You Proud Ole State, the Volunteer,
Your Proud Traditions I Hold Dear.
I Revere Your Many Heroes
Who Bravely Fought our Country's Foes.
Renowned Statesmen, so Wise and Strong,
Who Served our Country Well and Long.
I Thrill at Thought of Mountains Grand;
Rolling Green Hills and Fertile Farm Land;
Earth Rich with Stone, Mineral and Ore;
Forests Dense and Wild Flowers Galore;
Powerful Rivers that Bring us Light;
Deep Lakes with Fish and Fowl in Flight;
Thriving Cities and Industries;
Fine Schools and Universities;
Strong Folks of Pioneer Descent,
Simple, Honest, and Reverent.
Beauty and Hospitality
Are the Hallmarks of Tennessee.
And O'er the World as I May Roam,
No Place Exceeds my Boyhood Home.

And Oh How Much I Long to See
My Native Land, My Tennessee."

(b) The poem entitled, "My Tennessee," by Michael McDonald, is designated and adopted as an official state poem for this state, which poem reads as follows:

Cowboy boots, pickup trucks,
White-faced bulls, and lespedeza hay,
Cottontails runnin', beagle dogs singin'
Huntin' with Grandpa, on a gray, frosty day.

Sunday mornin' preachin, hell-fire and brimstone,
Country ham for dinner, banana puddin' and ice tea,
Pitchin' them horse-shoes, watermelon cuttin',
Friends and kinfolk underneath the old oak tree.

Tennessee, you're a raging river,
A Lookout Mountain, seeing as far as you can see,
Bloody Shiloh, brother against brother,
General Grant and Robert E. Lee,

Sittin' on a feed sack, pickin' my guitar,
Writin' them songs, in a country kinda way,
Whittlin' on a cedar stick, spittin' tobacco juice,
Spinnin' them yarns, about by-gone days.

Andrew Jackson and ol' Davy Crockett
Always were heroes to me.
Buckskin britches, black-powder rifles,
Dreamin' 'bout freedom and the days that used to be.

Tennessee I'll never leave you,
You're the heart and soul of me,
Mighty Mississippi, Great Smoky Mountains,
You're all these things, and more to me.

Matched-pair of sorrel mules, Tennessee walkers,
Munchin' on a moon pie and an R.O.C.;
Duck-head overalls, wish I had a Goo Goo;
All rared back listenin' to the Grand Ole Opry.

Tennessee I'll never leave you,
You're the heart and soul of me,
Mighty Mississippi, Great Smoky Mountains,
All these things, my Tennessee.

(c) The poem entitled, "My Beloved Tennessee" by Marlene Tidwell, is designated and adopted as an official state poem for this state. The poem reads as follows:

My thoughts wander on your path again
Captivated by the beauty of rolling hills
That rise above a road that bends,
As dusk spreads mist across the fields.
I heard the piping of the morning lay
And gazed on scenes from yesteryears,
When open come the gates of May,
And in purple ruffles the Iris appears.
Cherished memories thou doth hold,
Sweet home in Tennessee, to you I hope
To come before the winds grow cold.

Nestled in vales, quaint barns of old
Stood in wait for the gathering harvest
Scattered across autumn fields of gold,
And chapels adorned with steeples fair
Rang bells against the morning cold
Calling the pleasant and faithful there
To come and nourish thirsting souls.
Your faith has kept your pillars strong,
My heritage from days of old,
How blessed am I to call you home.

Your vaulted domes, in blue mist crowned,
Listen to babbling brooks shower chambers
Beneath, rich treasures there are found.
From afar they come to see your sights,
And hear your song, from Memphis to
Bristol, your cities shine bright.
For in distant lands your light has shown,
Oh Valiant Volunteer, you gave hope
To those you had never known.
Come to me in my dreams tonight
Oh beloved home in Tennessee,
When I wake with morning's light,
May I again be near to thee.

History.
Acts 1973, ch. 111, § 1; 1977, ch. 329, § 1; T.C.A., § 4-116; Acts 2019, ch. 215, § 1; 2021, ch. 118, § 1.

Amendments.
The 2021 amendment added (c).

Effective Dates.
Acts 2021, ch. 118, § 2. April 13, 2021.

4-1-304. State slogan.

The following is hereby adopted as an official slogan for this state: "Tennessee — America at Its Best." This slogan may be used in advertising the state and its attractions for industry, recreation and pleasant living.

History.
Acts 1965, ch. 33, § 1; T.C.A., § 4-114.

4-1-305. State tree.

The tulip poplar is designated and adopted as the official state tree of this state.

History.
Acts 1947, ch. 204, § 1; C. Supp. 1950, § 107.3; T.C.A. (orig. ed.), § 4-108.

4-1-306. State wild flowers.

The official wild flowers of this state shall be as follows:

(1) The passion flower, family *passiflora incarnate*; and

(2) Tennessee Echinacea, *Echinacea tennesseensis*.

History.
Acts 1973, ch. 16, § 1; T.C.A., § 4-117; Acts 2012, ch. 829, § 1.

4-1-307. State cultivated flower.

The iris, family *iridaceae*, is designated as the state cultivated flower.

History.
Acts 1973, ch. 16, § 2; T.C.A., § 4-118.

4-1-308. State insects — State agricultural insect.

(a) The well-known firefly, or lightning bug beetle, and the ladybird beetle, commonly known as the ladybug, are hereby designated as the official state insects.

(b) The honeybee is designated as the official agricultural insect of Tennessee in tribute to its fundamental role in the production of all crops.

History.
Acts 1975, ch. 292, § 1; T.C.A., § 4-120; Acts 1990, ch. 725, § 1.

4-1-309. State rock.

The useful and attractive calcium carbonate, commonly known as limestone, is hereby designated as the official state rock.

History.
Acts 1979, ch. 42, § 1; T.C.A., § 4-128.

4-1-310. State gem.

(a) The Tennessee pearl is hereby designated as the official state gem. This designation is not intended to prohibit such activities as dredging, filling, damming or other acts that are otherwise subject to regulation and control by the United States corps of engineers, the Tennessee Valley authority, or other governmental entities.

(b) The historic Tennessee River Freshwater Pearl Farm and Museum located in Camden, Benton County, Tennessee is hereby designated the official site of freshwater pearl culturing in the state of Tennessee.

History.
Acts 1979, ch. 192, § 1; T.C.A., § 4-129; Acts 2004, ch. 506, § 1.

Cross-References.
Permits for pearl culturing, § 70-2-220.

4-1-311. Official railroad museums.

The following are designated as official railroad museums in this state:

(1) The Tennessee Valley Railroad Museum, located in Hamilton County, which shall be indicated by an appropriate marker erected by the state. The signs shall be placed on the property of the museum and shall not exceed five hundred dollars ($500) in cost; and

(2) The Cowan Railroad Museum, located in Franklin County, which shall be indicated by an appropriate marker erected by the state. The museum may also receive appropriations as the general assembly deems necessary, grants from state or federal agencies, and donations from private or public sources.

History.
Acts 1978, ch. 547, § 1; T.C.A., § 4-127; Acts 2007, ch. 193, § 1.

4-1-312. State folk dance.

The square dance is hereby designated as the official state folk dance.

History.
Acts 1980, ch. 829, § 1.

4-1-313. Porcelain painting.

Porcelain painting (china painting) is recognized as a fine art in Tennessee.

History.
Acts 1981, ch. 55, § 1.

4-1-314. Great seal of the state of Tennessee.

(a) The great seal of the state of Tennessee shall be in the shape of a circle. The circumference of the circle shall bear the words "THE GREAT SEAL OF THE STATE OF TENNESSEE" and in the lower part of the circumference shall be the date "1796," being the year in which the constitution of Tennessee was adopted and Tennessee became one of the United States.

(b) Inside the upper semicircle of the circle shall be set the numerals "XVI," being the number of the state in chronological order within the United States; below the numerals shall be the figures of a plough, sheaf of wheat and cotton plant, emblematic of agriculture within the state; and under the base of the upper semicircle shall be the word "AGRICULTURE."

(c) Inside the lower semicircle of the circle shall be set the figure of a boat

with sail, emblematic of commercial activity in the state; and below this figure the word "COMMERCE."

(d) The size of the seal embossed shall be not greater in diameter than two and one-quarter inches (2¼″) nor smaller in diameter than one and three-quarter inches (1¾″).

(e) The size of printed seals shall conform to the range of sizes as permitted by the rules of the state publication committee.

(f) Until a different rendering of this design is submitted by the governor to the secretary of state and approved by resolution by both houses of the general assembly, voting separately, the design in use as of May 17, 1987 is hereby validated and adopted, to wit:

History.
Acts 1987, ch. 402, § 1.

4-1-315. State motto.

The motto of this state shall be "Agriculture and Commerce," as proclaimed on the great seal of the state of Tennessee since 1801.

History.
Acts 1987, ch. 402, § 2.

4-1-316. State commercial fish.

The channel catfish is hereby designated as the official state commercial fish.

History.
Acts 1988, ch. 489, § 1.

4-1-317. State sport fish.

The small-mouth bass is hereby designated as the official state sport fish.

History.
Acts 1988, ch. 489, § 2; 2005, ch. 277, § 1.

4-1-318. State game bird.

The bobwhite quail is hereby designated as the official state game bird.

History.
Acts 1988, ch. 775, § 1.

4-1-319. State butterfly.

The beautiful zebra swallowtail, *Eurytides marcellus*, is hereby designated as the official state butterfly.

History.
Acts 1994, ch. 896, § 1.

4-1-320. State amphibian.

The unique Tennessee cave salamander, *Gyrinophilus palleucus*, is hereby designated as the official state amphibian.

History.
Acts 1995, ch. 367, § 1.

4-1-321. State reptile.

The widespread eastern box turtle, *Terrapene carolina*, is hereby designated as the official state reptile.

History.
Acts 1995, ch. 367, § 2.

4-1-322. Official poem of the Tennessee Bicentennial.

The poem entitled "Who We Are" by Margaret Britton Vaughn, Poet Laureate of Tennessee, is designated and adopted as the official poem of Tennessee's Bicentennial, which poem reads as follows:

Who We Are
The Bicentennial of Tennessee
1796-1996
The fertile soil of Tennessee
Grew more than corn, tobacco, and cotton,
It grew a crop of people who are
Trailblazers, child raisers, flag wavers, soul savers.
Like the roots of the tulip poplar,
Our feet are planted deeply
Into good living, neighbor giving, God fearing.
Like the iris, buttercup and wild daisies,
Our towns have sprung up
In valleys, basins, mountains, plains and plateaus
That house cabins, mansions and hillside chateaus.
We're the one-room schoolhouse in the hollow;
We're the university grad and the front-porch scholar.
We're Davy Crockett at the Alamo,
Sergeant York, World War I hero.

We're Cordell Hull who served Roosevelt;
We're Chief Sequoyah and his Cherokee alphabet.
We're W.C. Handy and the Memphis Blues;
We're Ida B. Wells and Civil Rights news,
And Grand Ole Opry with old wooden pews.
We're "Rocky Top" and "Tennessee Waltz" the same;
We're "Star Spangled Banner" before the game.
We're mockingbirds singing Appalachian folk songs;
We're country church sing-alongs.
We're hand clappers, toe tappers, knee slappers
And Mama's lap lullaby nappers.
We're Jackson, Johnson and James K. Polk;
We're city slickers and poor hill folk;
We're Anne Dallas Dudley and the Suffrage Vote.
We're John Sevier, Don Sundquist and governors galore;
We're congressmen, mayors and Vice President Gore.
We're Wilma Rudolph's run for the gold
And Sunday golfers' eighteenth hole.
We're Christmas Eve and the Fourth of July;
We're 4-H and homemade chess pie.
We're TVA rivers, creeks and man-made lakes;
We're ruts in dirt roads and interstates.
We're all religions, creeds and peoples of race;
We're Tennesseans who love the home place.
We're the Volunteer State and will always be
Ready to go when someone's in need.
As our trees turn green and our barns turn gray.
We celebrate our two hundredth birthday.
We know we've done our best, stood the test,
And will be laid to rest
In the fertile soil of Tennessee.

History.
Acts 1997, ch. 337, § 1.

4-1-323. Official state tartan.

The design adopted by the Heart of Tennessee Scottish Celebration in conjunction with all the other Scottish Societies in Tennessee is designated as the official state tartan for Tennessee. The design is described as follows: A symmetrical tartan sett, using the following colors: natural white, dark green, purple, red, and dark blue. The colors shall be employed in a thread count of white — 2, green — 20, purple — 2, green — 12, red — 2, green — 2, purple — 2, white — 2, blue — 20 and red — 4. The pattern pivot is red line to return to green 20.

History.
Acts 1999, ch. 82, § 1.

4-1-324. State theatre of Tennessee.

Notwithstanding any law to the contrary, the Tennessee Theatre is hereby designated as the state theatre of Tennessee.

History.
Acts 1999, ch. 166, § 1.

4-1-325. State horse.

The Tennessee Walking Horse is hereby designated as the official state horse.

History.
Acts 2000, ch. 596, § 1.

4-1-326. State aviation hall of fame.

(a) Notwithstanding any law to the contrary, the Tennessee Aviation Hall of Fame, which is located at the Gatlinburg-Pigeon Forge Airport in Sevier County and which has been founded for the purpose of honoring aviation pioneers and leaders in Tennessee, is designated as the official state aviation hall of fame.

(b) The Tennessee Aviation Hall of Fame and affiliated Tennessee Museum of Aviation are designated as the official state repository and archive for aviation history.

History.
Acts 2001, ch. 78, § 1; 2003, ch. 158, § 1.

4-1-327. State fruit.

The delicious tomato, *Lycopersicon lycopersicum*, is designated as the official state fruit.

History.
Acts 2003, ch. 154, § 1.

4-1-328. Railroad library.

The A.C. Kalmbach Memorial Library in Chattanooga is an official railroad library of the state of Tennessee.

History.
Acts 2004, ch. 628, § 1.

4-1-329. Official salute to the Tennessee flag.

(a) The following salute written by Lucy Steele Harrison is designated and adopted as the first official salute to the flag of Tennessee:

"Three white stars on a field of blue
God keep them strong and ever true
It is with pride and love that we
Salute the Flag of Tennessee."

(b) The following salute written by Miss John Bostick is designated and

adopted as the second official salute to the flag of Tennessee:

"Flag of Tennessee, I salute thee
To thee I pledge my allegiance with
My affection, my service and my life."

History.
Acts 2006, ch. 841, § 1.

Compiler's Notes.
Acts 2006, ch. 841, § 2 provided that representatives of the Tennessee Historical Society, Tennessee History for Kids, The Tennessee Society, Daughters of the American Revolution and any other recognized group with an interest in Tennessee history or the Tennessee flag are urged to meet and discuss the issue of official salutes to the flag of Tennessee. If the group is able to develop recommendations for other salutes to the flag of Tennessee, or if the group determines there have been other salutes adopted by the general assembly or otherwise generally recognized, such group shall so state in a report to be filed with the clerk of the senate and the clerk of the house of representatives.

4-1-330. State mineral.

Agate is designated as the official state mineral.

History.
Acts 2009, ch. 30, § 1.

Compiler's Notes.
For the preamble to the act establishing agate as the official state mineral of Tennessee, please refer to Acts 2009, ch. 30.

4-1-331. State beverage.

Milk is designated as the official state beverage.

History.
Acts 2009, ch. 31, § 1.

Compiler's Notes.
For the preamble to the act establishing milk as the official state beverage of Tennessee, please refer to Acts 2009, ch. 31.

Cross-References.
Dairy Farmers Prosperity Act, § 53-3-301 et seq.

4-1-332. State evergreen tree.

The eastern red cedar, *Juniperus virginiana*, is designated as the official state evergreen tree.

History.
Acts 2012, ch. 567, § 1.

Compiler's Notes.
For the preamble to the act concerning the designation of the eastern red cedar as the official state evergreen tree, please refer to Acts 2012, ch. 567.

4-1-333. Official state botanical garden.

The University of Tennessee Botanical Gardens are designated as the official state botanical garden.

History.
Acts 2013, ch. 152, § 1.

Compiler's Notes.
For the preamble to the act concerning the official state botanical garden, please refer to Acts 2013, ch. 152.

4-1-334. State symbol of remembrance to honor fallen military service members.

(a) The Honor and Remember Flag is designated as the official state symbol of remembrance and as the symbol of our state's concern and commitment to honoring and remembering the lives of all members of the United States armed forces who have lost their lives while serving, or as a result of service, and their families.

(b) The design of the Honor and Remember Flag, created by Honor and Remember Inc., shall be of the following design:

(1) The principal field of the flag shall be red to represent the blood shed by brave servicemembers who sacrificed their lives for freedom;

(2) The white banner at the bottom of the flag to represent the purity of that sacrifice;

(3) The center of the flag shall feature a gold star outlined in blue. The blue star-shaped border represents active service in military conflict and dates back to World War I. The gold star signifies the ultimate sacrifice of a warrior in active service who is not returning home and reflects the value of life given;

(4) The folded flag element below the gold star highlights this nation's final tribute to a fallen servicemember and a family's sacrifice; and

(5) The center of the gold star shall be filled by a flame, to symbolize the eternal spirit of the departed.

History.
Acts 2014, ch. 539, § 1.

Code Commission Notes. Acts 2014, ch. 549, § 1, Acts 2014, ch. 571, § 1 and Acts 2014, ch. 821, § 1 all purported to enact § 4-1-334. Section 4-1-334 was previously enacted by Acts 2014, ch. 539, § 1, therefore, the enactment by Acts 2014, ch. 549, § 1 was designated as § 4-1-335; the enactment by Acts 2014, ch. 571, § 1 was designated as § 4-1-336; and the enactment by Acts 2014, ch. 821, § 1 was designated as § 4-1-337 by the authority of the code commission.

Compiler's Notes.
For the preamble to the act concerning designation of the Honor and Remember Flag as a symbol of remembrance of fallen military service members, please refer to Acts 2014, ch. 539.

4-1-335. Official state fife and drum corps.

The Watauga Valley Fife and Drum Corps is hereby designated as the official state fife and drum corps.

History.
Acts 2014, ch. 549, § 1.

Code Commission Notes. Acts 2014, ch. 549, § 1, Acts 2014, ch. 571, § 1 and Acts 2014, ch. 821, § 1 all purported to enact § 4-1-334. Section 4-1-334 was previously enacted by Acts 2014, ch. 539, § 1, therefore, the enactment by Acts 2014, ch. 549, § 1 was designated as § 4-1-335; the enactment by Acts 2014, ch. 571, § 1 was designated as § 4-1-336; and the enactment by Acts 2014, ch. 821, § 1 was designated as § 4-1-337 by the authority of the code commission.

Compiler's Notes.
For the preamble to the act concerning the official state fife and drum corps, please refer to Acts 2014, ch. 549.

4-1-336. Official state artifact.

"Sandy," the ancient stone statue discovered in 1939 on Sellars Farm in Wilson County, being a prime example of the Tennessee-Cumberland Style of

Mississippian Stone Statuary crafted and used during the Mississippian Period, AD 800 – 1500, is recognized as the official state artifact of Tennessee.

History.
Acts 2014, ch. 571, § 1.

Code Commission Notes. Acts 2014, ch. 549, § 1, Acts 2014, ch. 571, § 1 and Acts 2014, ch. 821, § 1 all purported to enact § 4-1-334. Section 4-1-334 was previously enacted by Acts 2014, ch. 539, § 1, therefore, the enactment by Acts 2014, ch. 549, § 1 was designated as § 4-1-335; the enactment by Acts 2014, ch. 571, § 1 was designated as § 4-1-336; and the enactment by Acts 2014, ch. 821, § 1 was designated as § 4-1-337 by the authority of the code commission.

4-1-337. Official state pet.

Dogs and cats that are adopted from Tennessee animal shelters and rescues are designated as the official state pet.

History.
Acts 2014, ch. 821, § 1.

Compiler's Notes. Acts 2014, ch. 549, § 1, Acts 2014, ch. 571, § 1 and Acts 2014, ch. 821, § 1 all purported to enact § 4-1-334. Section 4-1-334 was previously enacted by Acts 2014, ch. 539, § 1, therefore, the enactment by Acts 2014, ch. 549, § 1 was designated as § 4-1-335; the enactment by Acts 2014, ch. 571, § 1 was designated as § 4-1-336; and the enactment by Acts 2014, ch. 821, § 1 was designated as § 4-1-337 by the authority of the code commission.

4-1-338. Official state symbol.

The official state symbol shall be the circular feature of the state flag, adopted by chapter 498 of the Acts of 1905, and shall be of the following design: a circular field of blue surrounded by a circular stripe of white that is one-twentieth (1/20) the diameter of the circular field of blue. Inside the circular field of blue shall be three (3) five-pointed stars of white distributed at equal intervals around a point, the center of the blue field, and of such size and arrangement that one (1) point of each star shall approach as closely as practicable without actually touching one (1) point of each of the other two (2) around the center point of the blue field; and the two (2) outer points of each star shall approach as nearly as practicable without actually touching the periphery of the blue field. The arrangement of the three (3) stars shall be such that the centers of no two (2) stars shall align horizontally or vertically, but intermediate between same; and the highest star shall be the one located in the upper left of the blue field.

History.
Acts 2016, ch. 534, § 1.

4-1-339. Official state plane.

The Boeing B-17F known as the Memphis Belle is designated as the official state airplane.

History.
Acts 2017, ch. 33, § 1.

Compiler's Notes.
For the Preamble to the act concerning naming of the Boeing B-17F, known as the Memphis Belle, as official state airplane, please refer to Acts 2017, ch. 33.

4-1-340. Official state community theater.

The Oak Ridge Playhouse is designated as an official state community theater.

History.
Acts 2017, ch. 101, § 1.

4-1-341. Here's the Beef Festival.

The Here's the Beef Festival in Giles County is designated as the official state beef festival.

History.
Acts 2018, ch. 603, § 1.

Compiler's Notes.
For the Preamble to the act concerning state symbols and the Here's the Beef Festival, please refer to Acts 2018, ch. 603.

4-1-342. Official state buck dance competition.

Notwithstanding any law to the contrary, the Robert Spicer Memorial Buck Dance Championship is hereby designated the official buck dance competition of Tennessee.

History.
Acts 2019, ch. 2, § 1.

Compiler's Notes.
For the Preamble to the act concerning buck dancing, see 2019, ch. 2.

4-1-343. Official state dog.

The bluetick coonhound is designated as the official state dog.

History.
Acts 2019, ch. 7, § 1.

4-1-344. Official state nickname.

The official nickname of this state is "The Volunteer State."

History.
Acts 2020, ch. 516, § 1.

PART 4

MISCELLANEOUS

4-1-401. Standard time — Observation of advancement of time — Observation of year-round daylight savings time.

(a) There shall be observed in each and every part of this state only standard time as fixed for such area by the United States department of transportation. No town, city, municipal corporation, taxing district, county or other governmental subdivision shall possess power to adopt permanently or

temporarily or from time to time any other standard of time to be observed than as prescribed by this subsection (a). All municipal ordinances, resolutions or other forms of enactment by any body of the nature mentioned in this subsection (a) in conflict with this section are hereby nullified and made of no effect, whether enacted prior or subsequent to the effective date of this section.

(b) No person, firm, partnership, corporation or other entity operating or maintaining a place of business of whatsoever kind or nature shall employ, display or maintain or use any other standard of time in connection with such place of business than standard time as prescribed by this section. No radio or television station doing business in this state shall operate on, announce, employ, display, maintain or use any other standard of time than standard time as prescribed by this section.

(c) Whoever shall in connection with any place of business of whatsoever kind or nature employ, display, announce, operate on, maintain or use any other than standard time as prescribed by this section commits a Class C misdemeanor. Each day of such violation constitutes a separate offense.

(d)(1) This state shall observe the advancement of time provided in 15 U.S.C. § 260a at all times throughout the year, and daylight saving time will be the standard time of the entire state and all of its political subdivisions upon compliance with the following conditions:

(A) The United States congress amending or repealing 15 U.S.C. § 260a to authorize states to observe daylight saving time year round;

(B) The commissioner of transportation certifying in writing to the speakers of the senate and the house of representatives the congressional action described in subdivision (d)(1)(A); and

(C) The general assembly, by joint resolution, confirming the congressional action described in subdivision (d)(1)(A) and authorizing the implementation of the state's observation of daylight saving time year round.

(2) The observation of year-round daylight saving time will begin the first Sunday of November following compliance with the requirements of subdivision (d)(1).

History.

Acts 1949, ch. 5, § 1; C. Supp. 1950, § 5755.33 (Williams, § 11.1); Acts 1957, ch. 260, § 1; modified; T.C.A. (orig. ed.), § 4-113; Acts 1989, ch. 591, § 113; 2019, ch. 416, § 1.

Cross-References.

Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

1. Constitutionality.

This statute does not infringe upon freedom of speech. Phillips v. State, 202 Tenn. 402, 304 S.W.2d 614, 1957 Tenn. LEXIS 405 (1957).

This section is within the police powers of the state. Phillips v. State, 202 Tenn. 402, 304 S.W.2d 614, 1957 Tenn. LEXIS 405 (1957).

Classification of this section in applying to those operating or maintaining a place of business was proper. Phillips v. State, 202 Tenn. 402, 304 S.W.2d 614, 1957 Tenn. LEXIS 405 (1957).

4-1-402. Due dates falling on Saturday or Sunday.

Whenever the due date for filing any schedule, form or return with any state department or agency or for paying any tax due the state occurs on a Saturday

or Sunday, the taxpayer shall have until the close of business hours for such department or agency on the following Monday to file such schedule, form or return or to pay such tax.

History.
Acts 1974, ch. 439, § 1; T.C.A., § 4-119.

4-1-403. Appointments to state boards or commissions — Age discrimination prohibited.

Notwithstanding any law to the contrary, a person meeting all other requirements shall not be ineligible for appointment or reappointment to any state board or commission because of age.

History.
Acts 1973, ch. 120, § 3; 1977, ch. 8, § 1; T.C.A. § 4-115.

4-1-404. English — Official and legal language.

English is hereby established as the official and legal language of Tennessee. All communications and publications, including ballots, produced by governmental entities in Tennessee shall be in English, and instruction in the public schools and colleges of Tennessee shall be conducted in English unless the nature of the course would require otherwise.

History.
Acts 1984, ch. 821, § 1.

Cross-References.
Notice in English, § 48-51-202.
Refusal to register documents not in English, § 66-24-101.

Attorney General Opinions.
Dissemination of information by governmental agencies in languages other than English, OAG 07-112, 2007 Tenn. AG LEXIS 112 (7/25/07).

4-1-405. Use of certain symbols, mascots and names.

(a) The general assembly recognizes that many Tennessee institutions, both public and private, have elected to select symbols, mascots, and names to represent those institutions. The symbols, mascots, and names are often chosen in recognition of the area's heritage and to honor and respect certain persons or cultures and their contributions to our citizens and our state.

(b) No state agency has the authority to require or to prohibit or impair in any way the right of any public or private institution to continue to honor certain persons or cultures through the use of symbols, mascots and names.

History.
Acts 2007, ch. 371, § 1.

Attorney General Opinions.
To the extent the Tennessee human rights commission might seek to prohibit or limit the use of a name, symbol or mascot, T.C.A. § 4-1-405 prohibits the commission from taking such an action, OAG 07-132, 2007 Tenn. AG LEXIS 132 (8/30/07).

4-1-406. Flag display protocol — Display for soldiers killed in line of duty.

(a) Whenever the official United States flag or the official state flag is

displayed, appropriate flag display protocol requires that when flown on the same pole on property owned, operated or controlled by the state or any political subdivision of the state, including all educational institutions, the order of placement from top to bottom shall be the official United States flag, the official state flag, and any other flags.

(b)(1) As used in this subsection (b):

(A) "County" includes, but is not limited to, any county having a metropolitan form of government;

(B) "Member of the armed services" or "member" means a citizen of Tennessee who is a member of the armed forces of the United States, or a member of a reserve or Tennessee national guard unit who is called into active military service of the United States, as defined in § 58-1-102, and is stationed outside the United States during hostilities in which military personnel are entitled to combat compensation as determined by the United States department of defense; and

(C) "Political subdivision" means county or municipality.

(2) Notwithstanding any law to the contrary, in the event a member of the armed services, while serving honorably, is killed in action or dies as a direct result of injuries sustained from a service connected, combat-related cause, the governor shall proclaim a state-wide day of mourning and shall order the state flag to be flown at half-staff over the state capitol during such period of mourning.

(3) The governor or the governor's designee shall notify the executive official of the political subdivision in which such member of the armed services resided of the deceased member's identity and the date of the day of mourning declared pursuant to subdivision (b)(2). The executive official of the political subdivision, or such official's designee, shall order any state flag hoisted on the property of the political subdivision to be flown at half-staff during such day of mourning.

(4) The names of all members of the armed services for whom a state-wide day of mourning is declared pursuant to subdivision (b)(2) shall be recorded in the journals of the senate and the house of representatives.

History.
Acts 2007, ch. 394, § 1; 2009, ch. 169, § 1;
2011, ch. 8, § 1.

4-1-407. Preservation of religious freedom.

(a) As used in this section, unless the context otherwise requires:

(1) "Demonstrates" means meets the burdens of going forward with the evidence and of persuasion under the standard of clear and convincing evidence;

(2) "Exercise of religion" means the exercise of religion under the Constitution of Tennessee, Article I, § 3 and the first amendment to the United States Constitution;

(3) "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party;

(4) "Frivolous claim" means a claim that completely lacks merit under

existing law and cannot be supported by a good faith argument for the extension, modification or reversal of existing law or the establishment of new law;

(5) "Government entity" means any branch, department, agency, commission or instrumentality of state government, any official or other person acting under color of state law or any political subdivision of the state;

(6) "Prevails" means to obtain "prevailing party" status as defined by courts construing the federal Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. § 1988); and

(7) "Substantially burden" means to inhibit or curtail religiously motivated practice.

(b) Except as provided in subsection (c), no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

(c) No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is:

(1) Essential to further a compelling governmental interest; and

(2) The least restrictive means of furthering that compelling governmental interest.

(d)(1) Nothing in this section shall be construed to:

(A) Authorize any government entity to burden any religious belief; or

(B) Affect, interpret or in any way address those portions of the Constitution of Tennessee, Article I, § 3 and the first amendment to the United States Constitution that prohibit laws respecting the establishment of religion.

(2) Nothing in this section shall create or preclude a right of any religious organization to receive funding or other assistance from a government or of any person to receive government funding for a religious activity.

(e) A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain such declaratory relief, monetary damages as may properly be awarded by a court of competent jurisdiction, or both declaratory relief and monetary damages. A person who prevails in any proceeding to enforce this section against a government entity may recover the person's reasonable costs and attorney's fees. Standing to assert a claim or defense under this section shall be governed by general rules of law that establish standing. This subsection (e) relating to attorney's fees shall not apply to criminal prosecutions.

(f) Any person found by a court with jurisdiction over the action to have abused the protections of this section by filing a frivolous or fraudulent claim may be assessed the government entity's court costs, if any, and may be enjoined from filing further claims under this section without leave of court.

(g) A government entity, excluding courts, shall not subpoena a clergy member's sermon, including notes used to prepare a sermon or an audio or video recording of a sermon, or subpoena a clergy member's attendance to testify regarding a sermon, for use in a civil or administrative action.

History.
Acts 2009, ch. 573, § 1; 2015, ch. 472, § 1; 2018, ch. 663, § 1.

Law Reviews.
Baptizing O'Brien: Towards Intermediate Protection of Religiously Motivated Expressive Conduct, 68 Vand. L. Rev. 177 (2015).

NOTES TO DECISIONS

1. Application.
Construction of a micro-home village for the homeless constituted the exercise of religion under the RLUIPA and T.C.A. § 4-1-407 where the project was born out of a common, religiously motivated desire to help the homeless, the church recognized that cause as part of its core mission, and given the nature of the project, a lease arrangement with a nonprofit agency did not negate the protection that the statutes provide to the church. Ward v. Metro. Gov't of Nashville & Davidson Cty., — S.W.3d —, 2019 Tenn. App. LEXIS 186 (Tenn. Ct. App. Apr. 17, 2019), review denied and ordered not published, — S.W.3d —, 2019 Tenn. LEXIS 494 (Tenn. Oct. 14, 2019).

Requiring the project to comply with the RS 10 zoning regulations constituted a substantial burden on the church's exercise of religion under the RLUIPA and T.C.A. § 4-1-407 where there was no evidence that the project could be constructed at another church-owned site, requiring the project to comply would have delayed the response to the urgent need for housing for the homeless, and nothing indicated that the church had burdened itself. Ward v. Metro. Gov't of Nashville & Davidson Cty., — S.W.3d —, 2019 Tenn. App. LEXIS 186 (Tenn. Ct. App. Apr. 17, 2019), review denied and ordered not published, — S.W.3d —, 2019 Tenn. LEXIS 494 (Tenn. Oct. 14, 2019).

4-1-408. Departments and agencies of state government to strive for economic efficiency.

(a) Each department and agency of state government shall strive to achieve economic efficiency through utilization of innovative approaches and methodologies while maintaining the highest level of service for the citizens of Tennessee.

(b) In achieving economic efficiency, each department and agency is encouraged to seek input and ideas from their employees and the general public. Each department and agency is encouraged to include a public comment portal on its website to facilitate such solicitations.

(c) Each department and agency shall annually report progress in achieving economic efficiency during their budget hearings to the appropriate committees of the senate and house of representatives.

History.
Acts 2010, ch. 706, § 1.

4-1-409. Autism Awareness Recognition Day.

The governor shall designate one (1) day of each calendar year during the month of April as "Autism Awareness Recognition Day" in order to promote knowledge within the state's communities about the condition, the need for community services and appropriate medical treatment for the condition.

History.
Acts 2011, ch. 226, § 1.

4-1-410. Tennessee's Day of Prayer.

The governor shall designate the first Thursday during the month of May of

each calendar year as "Tennessee's Day of Prayer" on which the people of this state may turn to prayer, meditation or otherwise give thanks, in accordance with their own faiths and consciences.

History.
Acts 2012, ch. 566, § 1.

Code Commission Notes. Acts 2012, ch. 850, § 1 purported to enact § 4-1-410. Section 4-1-410 was previously enacted by Acts 2012, ch. 566, § 1; therefore, the enactment by Acts 2012, ch. 850, § 1 was designated as § 4-1-411 by the code commission.

Attorney General Opinions.
Constitutionality of legislation requiring governor to designate "Tennessee's Day of Prayer". OAG 12-14, 2012 Tenn. AG LEXIS 14 (2/14/12).

4-1-411. Tennessee Genealogy Month.

The month of July each year shall be observed as "Tennessee Genealogy Month," to be proclaimed as such by the governor.

History.
Acts 2012, ch. 850, § 1.

Code Commission Notes. Acts 2012, ch. 850, § 1 purported to enact § 4-1-410. Section 4-1-410 was previously enacted by Acts 2012, ch. 566, § 1; therefore, the enactment by Acts 2012, ch. 850, § 1 was designated as § 4-1-411 by the code commission.

4-1-412. Tennessee heritage protection.

(a) For purposes of this section:

(1) "Commission" means the Tennessee historical commission;

(2) "Historic conflict" means any war, battle, or military conflict in which citizens of the United States or any state or territory of the United States have participated in, including, but not limited to, the French and Indian War, American Revolution, War of 1812, United States-Mexican War, the War Between the States, Spanish American War, the Mexican border period, World War I, World War II, the Korean War, the Vietnam War, Operation Urgent Fury (Grenada), Operation El Dorado Canyon (Libya), Operation Just Cause (Panama), Operation Desert Shield/Desert Storm (Persian Gulf War I), Operation Enduring Freedom (Afghanistan), and Operation Iraqi Freedom (Persian Gulf War II);

(3) "Historic entity" means any entity recognized as having state, national, military, or historical significance;

(4) "Historic event" means any event recognized as having state, national, military, or historical significance;

(5) "Historic figure" means any individual who has been recognized as having served in any historic conflict, historic event, historic entity, public office, or in public service;

(6) "Historic organization" means any entity that has as one (1) or more of its material missions as the recognition or preservation of any historic conflict, historic entity, historic event, or historic figure;

(7) "Memorial" means:

(A) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or

(B) Any statue, monument, memorial, bust, nameplate, historical

marker, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; and

(8) "Public property" means all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

(b)(1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

(2) No memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.

(3)(A) Notwithstanding subdivision (b)(1), a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorial.

(B) This subdivision (b)(3) shall not be construed to authorize:

(i) Permanent removal or concealment of a memorial; or

(ii) Temporary removal or concealment of a memorial for a period exceeding forty-five (45) calendar days in any twelve-month period.

(c)(1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) or (b)(2), or both, if applicable. A public entity shall petition the commission for a waiver prior to undertaking any action or transaction, including any action or transaction involving a nonprofit entity or private party, that could foreseeably violate the restrictions imposed by this section.

(2) The petition for waiver shall be in writing and shall state the basis upon which the waiver is sought. The petition shall be supported by one (1) or more reports showing that there is a material or substantial need for a waiver based on historical or other compelling public interest. The petition shall also identify by name and address any private entities, groups, or individuals, including, but not limited to, descendants, that may have an interest in receiving notice of the petition. The petition for waiver shall be filed with the commission with proof of public notice as required by subdivision (c)(3).

(3) Prior to filing the petition for waiver, the public entity seeking a waiver shall publish notice of the petition for waiver on the website of the public entity, if any, and in at least one (1) newspaper of general circulation serving the area of the memorial and one (1) in Davidson County. The notice shall state the basis on which the waiver is sought and shall provide that a copy of the petition and all supporting reports will be provided to any interested party at no cost upon written request submitted to the public entity filing or intending to file the petition for waiver.

(4) An initial hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than sixty (60) calendar days after a petition is filed. At the initial hearing, the commission shall determine which interested entities, groups, or individuals should be given written notice by the public entity, including copies of the petition and supporting reports. The public entity may be directed to provide supplemental notice by publication if deemed necessary by the commission. If an amendment to the petition is filed, the public entity shall provide supplemental notice. If supplemental notice is required either by the commission or as a result of an amendment, notice shall be given in the same manner as notice required pursuant to subdivision (c)(3).

(5) A final hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than one hundred eighty (180) calendar days after a petition is filed; provided, that if an amendment to the petition is filed, then no final hearing shall be scheduled until at least one hundred eighty (180) calendar days have elapsed from the date of the filing of the amendment.

(6) An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission. In addition, an interested entity, group, or individual may intervene in any petition for waiver by filing written notice with the commission not less than forty-five (45) calendar days prior to the final hearing. Upon filing notice, the interested entity, group, or individual shall be a party in all proceedings on the petition for waiver, shall receive copies of all filings, and may present relevant testimony and evidence at any hearing on the petition. Once notice is filed with the commission, the status of the interested entity, group, or individual as a party to the petition for waiver, and any subsequent or concurrent administrative or judicial proceedings, may only be waived in writing by the interested entity, group, or individual.

(7) All hearings regarding a petition for waiver shall be recorded. Copies of the record and all exhibits shall be available to any interested entity, group, or individual at the cost of the public entity seeking the waiver.

(8)(A) In order for a waiver to be granted, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preservation of the memorial.

(B) At the final hearing, the commission may grant a petition for waiver, in whole or in part, by a two-thirds (⅔) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible. Any petition for waiver that fails to receive a two-thirds (⅔) vote

shall be denied. Within thirty (30) calendar days from the final hearing, the final determination of the commission shall be reduced to writing and shall state the commission's findings and the grounds on which the relief is granted or denied. The effective date of the determination shall be not less than one hundred twenty (120) calendar days after notice of the commission's determination is posted on the website of the commission. Copies of the final determination shall be sent to the public entity seeking the waiver and to each interested entity, group, or individual who testified or submitted evidence at the final hearing.

(9) A public entity seeking a waiver or interested entity, group, or individual who intervened in accordance with subdivision (c)(6) who is aggrieved by the final determination of the commission on the petition for a waiver may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the memorial is located or, in the case of a memorial that is located in multiple counties, the county in which the memorial is predominantly located. A petition for review shall be filed within sixty (60) calendar days after notice of the commission's determination is posted on the website of the commission. The court shall conduct a de novo review on the record of the issues. The review shall be conducted without a presumption that the determinations and findings of the commission are correct. Additional evidence may be introduced and considered by the court.

(d) Any entity, group, or individual who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, through petition for declaratory order, or through administrative involvement in either the waiver or complaint process, has standing to seek injunctive or other relief in chancery court of Davidson County to enforce this section. To the extent necessary to preserve the status of any memorial prior to a final determination on a waiver or complaint by the commission, administrative law judge, or chancery court, the court shall issue a restraining order or injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond or other security shall be required for any restraining order or other injunctive relief issued.

(e)(1) This section shall apply to any memorial in existence prior to January 1, 1970, and those lawfully created, erected, named, or dedicated on or after January 1, 1970.

(2) This section shall not apply to any memorial located on public property under the control of, or acquired by, the department of transportation which may interfere with the construction, maintenance, or operation of the public transportation system. The department shall strive to ensure that any memorial is preserved to the greatest extent possible.

(3) This section shall not apply to a memorial that has reached the end of its useful life and is approved for demolition by the state building commission in accordance with § 4-15-102; provided, that, prior to any decision to demolish a memorial designated as a national historic landmark or listed on the register of historic places, the historical commission shall make comments to the state building commission in accordance with § 4-11-111.

(4) This section shall not apply to a memorial under the control of an accredited museum when:

(A) Housed within the interior of the museum, or museum storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(5) This section shall not apply to a memorial under the control of a public library or public archive when:

(A) Housed within the interior of the library or archive, or library or archive storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(f)(1) The commission has authority to receive and consider complaints alleging violations of subdivision (b)(1), (b)(2), or (b)(3)(B).

(2) Complaints may be filed by any entity, group, or individual. All complaints must be in writing on a uniform complaint form to be posted on the website of the commission. Complaints must be filed within one hundred twenty (120) calendar days of the alleged violation.

(3) A hearing on a complaint must be set within one hundred twenty (120) calendar days after the complaint is filed. Multiple complaints alleging the same violation must be joined. The complainant and public entity shall be given at least thirty (30) calendar days' notice of the date of the hearing. The complainant and the public entity shall be afforded the opportunity to present evidence at the hearing. At the hearing, the commission may determine that a violation has occurred by a majority vote of the entire membership of the commission; provided, that if the complainant is a member of the commission, the member shall not participate in the commission's deliberations or vote on the complaint. If a violation has occurred, the commission shall prepare a written violation determination. The complaint shall be deemed dismissed if a violation is not determined to have occurred at the hearing. Once acted upon, no complaint alleging the same, or substantially the same, violation by the same public entity during the same episode shall be received and considered by the commission unless initiated by the commission.

(4) The commission shall transmit a copy of a violation determination to the public entity and to the department of economic and community development.

(5) A public entity that violates any provision of this section shall be precluded from entering into grant contracts administered by the commission and the department of economic and community development for a period of five (5) years from the date upon which a violation determination is made.

(g) The commission, at its discretion, may assist any public entity or historic organization with preservation of a memorial through consultation, best practices, or other available resources.

(h) Notwithstanding any provision of this section, in lieu of a waiver, a historic organization may petition the commission to transfer ownership of, relocate, or both transfer ownership of and relocate, a memorial to the historic

organization with the consent of the public entity exercising control over the memorial. The petition must be filed with a copy of a resolution, ordinance, or order from the governing body of the public entity consenting to the transfer, relocation, or both transfer and relocation. The petition must include an assessment of costs associated with the transfer, relocation, or both transfer and relocation, and identify who will be responsible for the costs. If the petition includes relocation, a description or map of the proposed location must be submitted with the petition. A memorial may be relocated only to an accessible and suitable location within this state as determined by the commission. The commission may approve a petition upon a majority vote of the entire membership of the commission.

(i) The Uniform Administrative Procedures Act, compiled in chapter 5 of this title, shall apply to this section except to the extent that the provisions of this section conflict, in which case this section shall control.

History.

Acts 2013, ch. 75, § 2; 2016, ch. 601, § 2; 2017, ch. 201, §§ 1, 2; 2018, ch. 1033, §§ 1-9.

Compiler's Notes.

Acts 2013, ch. 75, § 1 provided that the act, which enacted § 4-1-412, shall be known and may be cited as the "Tennessee Heritage Protection Act of 2013."

A reference to "Korean Conflict" in subdivision (a)(1) has been changed to "Korean War" pursuant to Acts 2000, ch. 656, § 2.

Acts 2016, ch. 601, § 1, provided that the act, which amended this section, shall be known and may be cited as the "Tennessee Heritage Protection Act of 2016."

Acts 2016, ch. 601, § 3, provided that the act, which amended this section, is remedial in nature and shall be liberally construed in favor of historical preservation.

Acts 2016, ch. 601, § 4, provided that the act, which amended this section, shall apply to petitions for waiver initiated with the Tennessee historical commission on or after March 11, 2016.

Acts 2018, ch. 1033, § 10, provided that the act, which amended this section, is remedial in nature and shall be liberally construed in favor of historical preservation.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Enforcement.
3. Standing.

1. Construction.

Under the 2017 version of the statute, the language authorizing an injunction "prior to a final determination by the commission," refers to a final determination on a petition for waiver rather than a final "order" or "decision" in a contested case under the Uniform Administrative Procedure Act. Sons of Confederate Veterans v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 279 (Tenn. Ct. App. June 4, 2019).

2. Enforcement.

Statute gave the trial court jurisdiction over actions to enforce the Tennessee Heritage Protection Act, yet appellant's complaint was not an action to enforce the Act, there was no final determination pending by the commission, and the city's waiver proceedings were terminated; thus, the trial court had no authority to issue an injunction to preserve the status of the statue. By the time appellant sought a temporary injunction, the statue was no longer on public property and was no longer a memorial whose status could be preserved. Sons of Confederate Veterans v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 279 (Tenn. Ct. App. June 4, 2019).

3. Standing.

Appellant had standing to seek relief regarding the statue one, as its complaint averred it had worked to develop, promote and protect all parks, monuments, and memorials in or surrounding the city related in any way to the Civil War and it was involved in waiver request proceedings, but appellant never sought a waiver regarding the parks or statues two and three, and thus had no standing as to them. Sons of Confederate Veterans v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 279 (Tenn. Ct. App. June 4, 2019).

4-1-413. Women in STEM month.

The month of August shall be designated "Women in STEM" month to raise awareness of the opportunities for women to pursue a career in a science, technology, engineering, and math (STEM) related field.

History.
Acts 2014, ch. 935, § 1.

Compiler's Notes.
For the preamble to the act concerning encouraging women to pursue a career in STEM related fields, please refer to Acts 2014, ch. 935.

4-1-414. Tennessee's Weekend of Prayer Over Students.

The governor shall designate the first weekend in August of each calendar year as "Tennessee's Weekend of Prayer Over Students" on which the people of this state may, in accordance with their own faith and consciences, turn to prayer, meditation, or otherwise give thanks for the students of this state as well as their teachers, administrators, and schools.

History.
Acts 2015, ch. 298, § 1.

Compiler's Notes.
For the Preamble to the act concerning prayer for the students of Tennessee, see Acts 2015, ch. 298, § 2.

4-1-415. Tennessee Archaeology Awareness Month.

The month of September shall be designated "Tennessee Archaeology Awareness Month" to encourage all citizens to learn more about prehistoric and historic archaeology in Tennessee.

History.
Acts 2015, ch. 28, § 1.

4-1-416. Carbon Monoxide Awareness Day.

September 18 of each calendar year shall be designated "Carbon Monoxide Awareness Day" to bring awareness to the dangers of carbon monoxide.

History.
Acts 2015, ch. 111, § 1.

Compiler's Notes.
For the Preamble to the act concerning the legislative purpose for Carbon Monoxide Awareness Day, see Acts 2015, ch. 111.

4-1-417. Lung Cancer Awareness Month.

The month of November each year shall be designated as "Lung Cancer Awareness Month" in order to promote knowledge within the state concerning lung cancer diagnosis, treatment, and research.

History.
Acts 2015, ch. 299, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need for Tennesseeans to be better informed about diagnosis, treatment and research relative to lung cancer, see Acts 2015, ch. 299.

4-1-418. Tennessee Tri-Star General Award.

(a) There is established an award to be known as the "Tennessee Tri-Star General Award."

(b)(1) The governor may recognize distinguished individuals who have a record of outstanding service to this state or a local subdivision of this state by awarding such individuals the Tennessee Tri-Star General Award. The award shall honor individuals who have demonstrated a high level of service, including, but not limited to: volunteer work or community service; public service; military service; leadership; or charitable, business, or scientific contributions.

(2) Each member of the general assembly may submit one (1) nomination for the award to the governor each calendar year.

(3) The governor may recognize with the award up to five (5) individuals who are not nominated by the general assembly each calendar year.

(4) Nominees must have resided in this state for at least five (5) years.

(5) The award may recognize an individual posthumously; provided, that the individual satisfies all other requirements in this section.

(c) Individuals recognized pursuant to this section shall bear the honorary title of "Tennessee Tri-Star General". The award shall consist of a certificate bearing the great seal of the state of Tennessee and be signed by the governor and secretary of state.

History.
Acts 2016, ch. 920, § 1.

4-1-419. Tennessee craft beer and cider month.

The month of April is designated as "Tennessee Craft Beer and Cider Month" in recognition of the contributions of Tennessee craft breweries and cideries to this state's economic growth and diversification.

History.
Acts 2017, ch. 136, § 1.

4-1-420. Reelfoot Lake designated Tennessee Heritage Site.

(a) Reelfoot Lake is designated as a Tennessee Heritage Site.

(b) A department or agency of this state may use the terms "Reelfoot Lake" or "Tennessee Heritage Site," or both, for purposes of publications, advertisements, marketing, and other communications.

History.
Acts 2019, ch. 443, § 1.

4-1-421. Tennessee's first peoples.

The following cultural groups are recognized as Tennessee's first peoples:

(1) The Algonquian peoples, including the Shawnee and Lenape;

(2) The Chickamaugan peoples;

(3) The Iroquoian peoples, including the Cherokee;

(4) The Muskogean peoples, including the Alabama, Coosa, Chickasaw,

Natchez, Koasati, Tuskegee, and Taliwa;

(5) The Siouan peoples, including the Quapaw and Mosopelea; and

(6) The Yuchean peoples, including the Chisca, Yuchi, Taougal, Tongeria, and Tamahita.

History.
Acts 2021, ch. 58, § 1.

Effective Dates.
Acts 2021, ch. 58, § 2. March 29, 2021.

PART 5

THREE STARS OF TENNESSEE AWARD

4-1-501. Three Stars of Tennessee Award — What constitutes — When presented — Selection and administration by homeland security council.

(a) This part shall be known as the "Three Stars of Tennessee Award."

(b) The award shall consist of a plaque and a medal.

(c) The governor or the governor's designee shall present a Three Stars of Tennessee Award to each recipient or surviving next of kin during a public ceremony held on, or as near as practicable to, September 11 of each year.

(d) The Three Stars of Tennessee Award shall be selected and administered by the homeland security council created by Executive Order No. 8 of 2003, within the department of safety.

History.
Acts 2014, ch. 950, § 1.

Compiler's Notes.
For the Preamble to the act concerning recognition of peace officers, firefighters, and medical first responders who were either killed or suffered a career-ending injury in the line of duty, please refer to Acts 2014, ch. 950.

4-1-502. Presentation to peace officers or next of kin — Submission of information to council — "Peace officer" defined.

(a) A Three Stars of Tennessee Award shall be awarded to:

(1) A peace officer who suffers a career-ending injury in the line of duty;

(2) The surviving next of kin of a peace officer who is killed or sustains a fatal injury in the line of duty;

(3) A federal law enforcement officer or special agent who suffers a career-ending injury in the line of duty assisting a state or local law enforcement agency; or

(4) The surviving next of kin of a federal law enforcement officer or special agent who sustains a fatal injury while assisting a state or local law enforcement agency in this state.

(b) Any person who has personal knowledge of a peace officer who was killed or suffered a career-ending injury in the line of duty, or a federal law enforcement officer or special agent who was killed or suffered a career-ending injury assisting a state or local law enforcement agency in this state, may submit that information in writing to the council.

(c) As used in this section, "peace officer" means an officer, employee or agent of government who has a duty imposed by law to maintain public order; make arrests for offenses, whether that duty extends to all offenses or is

limited to specific offenses including laws and regulations pertaining to the forests of this state; and to investigate the commission or suspected commission of offenses.

History.
Acts 2014, ch. 950, § 1.

Compiler's Notes.
For the Preamble to the act concerning recognition of peace officers, firefighters, and medical first responders who were either killed or suffered a career-ending injury in the line of duty, please refer to Acts 2014, ch. 950.

4-1-503. Presentation to firefighters or next of kin — Submission of information to council — "Firefighter" defined.

(a) A Three Stars of Tennessee Award shall be awarded to:

(1) A firefighter who suffers a career-ending injury in the line of duty; or

(2) The surviving next of kin of a firefighter who is killed or sustains a fatal injury in the line of duty.

(b) Any person who has personal knowledge of a firefighter who, in the line of duty was killed or suffered a career-ending injury may submit that information in writing to the council.

(c) As used in this section, "firefighter" means any full-time, part-time, or volunteer firefighter hired or accepted as a firefighter by a fire department recognized under the Fire Department Recognition Act, compiled in title 68, chapter 102, part 3 and meets the minimum training requirements of § 4-24-112.

History.
Acts 2014, ch. 950, § 1.

Compiler's Notes.
For the Preamble to the act concerning recognition of peace officers, firefighters, and medical first responders who were either killed or suffered a career-ending injury in the line of duty, please refer to Acts 2014, ch. 950.

4-1-504. Presentation to medical first responders or next of kin — Submission of information to council — "Medical first responder" defined.

(a) A Three Stars of Tennessee Award shall be awarded to:

(1) A medical first responder who suffered a career-ending injury in the line of duty; or

(2) The surviving next of kin of a medical first responder who is killed or sustains a fatal injury in the line of duty.

(b) Any person who has personal knowledge of a medical first responder who was killed or suffered a career-ending injury in the line of duty may submit that information in writing to the council.

(c) As used in this section, "medical first responder" means emergency services personnel or other person who responds to calls for emergency medical assistance from a 911 call.

History.
Acts 2014, ch. 950, § 1.

Compiler's Notes.
For the Preamble to the act concerning recognition of peace officers, firefighters, and medical first responders who were either killed or suffered a career-ending injury in the line of duty, please refer to Acts 2014, ch. 950.

CHAPTER 2
BOUNDARIES

Section
4-2-101. North Carolina boundary.
4-2-102. Commissioners' North Carolina boundary.
4-2-103. Virginia boundary.
4-2-104. Kentucky boundary.
4-2-105. Georgia boundary.
4-2-106. Mississippi boundary.
4-2-107. Missouri and Arkansas boundaries.

4-2-101. North Carolina boundary.

The boundaries of this state, as defined by the cession act of North Carolina, and embodied in the Constitutions of 1796, of 1834 and of 1870, article I, § 31, are as follows: Beginning on the extreme height of the Stone Mountain, at the place where the line of Virginia intersects it, in latitude thirty-six degrees and thirty minutes (36° 30′) north; running thence along the extreme height of that mountain to the place where the Watauga River breaks through it; thence, a direct course, to the top of the Yellow Mountain, where Bright's Road crosses it; thence along the ridge of that mountain, between the waters of Doe River and the waters of Rock Creek, to the place where the road crosses the Iron Mountain; from thence along the extreme height of that mountain to the place where the Nolichucky River runs through it; thence to the top of the Bald Mountain; thence along the extreme height of that mountain to the Painted Rock, on French Broad River; thence along the highest ridge of that mountain to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of that mountain to the place where it is called Unicoi or Unaka Mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of that mountain to the southern boundary of North Carolina, including all the territory, lands and waters lying west of that line, and contained within the chartered limits of the state of North Carolina before the cession.

History.
Code 1858, § 60; Shan., § 71; Code 1932, § 82; T.C.A. (orig. ed.), § 4-201.

Cross-References.
Acts fixing boundaries left unrepealed, § 1-2-105.
Boundaries of state, Tenn. Const., art. I, § 31.

Textbooks.
Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1.

4-2-102. Commissioners' North Carolina boundary.

The boundary line between this state and the state of North Carolina, as run by commissioners appointed for the purpose of running and marking the same, begins at a stone set up on the north side of Cataloochee Turnpike Road, and marked on the west side, "Ten., 1821," and on the east side, "N.C., 1821"; running thence in a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River, about seven (7) miles above the old Indian town of Tallassee, crossing Porter's Gap at the

distance of twenty-two (22) miles from the beginning, passing Meigs' boundary line at thirty-one and one-half (31 ½) miles, the Equovettly path at fifty-three (53) miles and crossing Tennessee River at the distance of sixty-five (65) miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhills Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three (93) miles from the beginning; thence along the extreme height of Unicoi or Unaka Mountain to the southwest end thereof, at the Unicoi or Unaka Turnpike Road, where a cornerstone is set up, marked "Ten." on the west side and "N.C." on the east side, and where a hickory tree is also marked on the south side, "Ten. 101 M.," and on the north side, "N.C. 101 M.," being one hundred one (101) miles from the beginning; from thence a due course south two (2) miles and two hundred fifty-two (252) poles to a spruce pine on the north bank of the Hiwassee River below the mouth of Cane Creek; thence up that river the same course about one (1) mile, and crossing the same to a maple, marked "W.D." and "R.A.," on the south bank of the river; thence continuing the same course due south eleven (11) miles and two hundred seventy-three (273) poles to the southern boundary of the states of Tennessee and North Carolina, making in all one hundred sixteen (116) miles and two hundred twenty-three (223) poles from the beginning, and striking the southern boundary line twenty-three (23) poles west of a tree in that line, marked "72 M.," where was set up by the commissioners a square post, marked on the west side "Ten., 1821," and on the east side, "N.C., 1821," and on the south, "G."

History.

Code 1858, § 61 (deriv. Acts 1821, ch. 35); Shan., § 72; Code 1932, § 83; T.C.A. (orig. ed.), § 4-202.

Compiler's Notes.

The North Carolina commissioners in 1799 began at the Virginia line and ran the boundary line to the top of a high pinnacle of the Smoky Mountain beyond the French Broad River, where they stopped. The joint commissioners of North Carolina and Tennessee in 1821 began at the termination of the line run by the North Carolina commissioners and surveyed to the Georgia line. See *McCarty v. Carolina Lumber Co.*, 134 Tenn. 35, 182 S.W. 909, 1915 Tenn. LEXIS 146 (1915).

Textbooks.

Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1; 22 Tenn. Juris., State, § 4.

4-2-103. Virginia boundary.

The boundary line between this state and the state of Virginia begins on the summit of the White Top Mountain, at the termination of the northeast corner of this state, running thence a due west course to the top of the Cumberland Mountain, where the southwestern corner of the state of Virginia terminates, equidistant from the lines called Walker's and Henderson's.

History.

Code 1858, § 62 (deriv. Acts 1803, ch. 58, § 1); Acts 1889, ch. 222, § 1; Shan., § 73; Code 1932, § 84; T.C.A. (orig. ed.), § 4-203.

Compiler's Notes.

Walker's line is one run by Virginia commissioners in 1780, and Henderson's line is one run by North Carolina commissioners in what is now Tennessee in pursuance of Acts 1779 (Apr.), ch. 16. These two lines resulted from the disagreement of the commissioners representing the respective states, and are about two miles apart. See *Parker v. Claiborne*, 32 Tenn. 565 (1852).

By compact between Virginia and Tennessee,

it was agreed that a line equally distant from Walker's line and Henderson's line should be the true boundary line between them, which line was run and marked in pursuance of statutes of each state in 1802 and confirmed by Acts 1803, ch. 58. See *Campbell v. Crockett*, 16 Tenn. 225 (1835); *Lessee of Brock v. Burchett*, 32 Tenn. 27 (1852); *Parker v. Claiborne*, 32 Tenn. 565 (1852); *Sharp v. Van Winkle*, 80 Tenn. 15 (1883).

Acts 1901, ch. 85 ceded a narrow strip of land within the city of Bristol to the state of Virginia.

Textbooks.

Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1; 22 Juris., State, § 4.

NOTES TO DECISIONS

Analysis

1. Boundary Line.
2. Land in Disputed Territory — Statute of Limitations.

1. Boundary Line.

The boundary line established by compact between Virginia and Tennessee is the real, certain and true boundary between the states, except as modified by Acts 1901, ch. 85. Virginia v. Tennessee, 148 U.S. 503, 13 S. Ct. 728, 37 L. Ed. 537, 1893 U.S. LEXIS 2248 (1893); Tennessee v. Virginia, 177 U.S. 501, 20 S. Ct. 715, 44 L. Ed. 863, 1900 U.S. LEXIS 1819 (1900); Tennessee v. Virginia, 190 U.S. 64, 23 S. Ct. 827, 47 L. Ed. 956, 1903 U.S. LEXIS 1541 (1903).

2. Land in Disputed Territory — Statute of Limitations.

By the compact between Tennessee and Virginia, the grants of either state for lands lying within the disputed territory that might fall into either state by the ascertainment of the boundary line between them were ratified and made binding, so as to secure the claims or titles of the owners claiming under such grants; but the statute of limitations of Tennessee did not commence to operate as to lands falling within its limits by the establishment of the boundary line until the line was so established. Robinson v. Campbell, 16 U.S. 212, 4 L. Ed. 372, 1818 U.S. LEXIS 358 (1818); Lessee of Pollard's Heirs v. Kibbe, 39 U.S. 353, 10 L. Ed. 490, 1840 U.S. LEXIS 378 (1840).

4-2-104. Kentucky boundary.

(a) The boundary line between this state and the state of Kentucky, as run by commissioners for this state and the state of Kentucky, appointed for the purpose of running and marking the same, runs as is set forth in detail in Acts 1821, chapter 44; 1857-1858, chapter 26; 1859-1860, chapter 79.

(b) All the intervening marks and monuments made and set up by duly authorized boundary commissioners heretofore or hereafter appointed shall be the only lawful boundary between this state and the state of Kentucky, and all the lands lying and inhabitants residing south of that boundary line are, and shall be, subject to the laws and jurisdiction of this state.

(c) It is a Class C misdemeanor to alter, deface, disfigure, change, remove or destroy any of these marks or monuments.

(d) Land titles shall not be affected in any manner by the establishment of the state line described as the boundary between the two (2) states.

History.

Acts 1859-1860, ch. 79, §§ 2-5; Shan., §§ 74-77; Code 1932, §§ 85-88; mod. C. Supp. 1950, § 86; T.C.A. (orig. ed.), § 4-204; Acts 1989, ch. 591, § 113.

Cross-References.

Penalty for Class C misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1; 22 Tenn. Juris., State, § 4.

NOTES TO DECISIONS

Analysis

1. Compact Establishing Boundary.
2. Lands Granted by Compact — Statute of Limitations.

1. Compact Establishing Boundary.

The compact between Tennessee and Kentucky, fixing and establishing Walker's line as the boundary line between them, made in 1820 and confirmed by congress, was valid and binding upon the states, and the ratification of the grants issued by the states in the disputed territory operated to give validity to the grants. Poole v. Lessee of Fleeger, 36 U.S. 185, 9 L. Ed. 680, 1837 U.S. LEXIS 174 (1837).

2. Lands Granted by Compact — Statute of Limitations.

Under the fifth article of the compact of February 2, 1820, between Tennessee and Kentucky, providing that all vacant and unappropriated lands east of the Tennessee River, and north of the parallel of latitude 36 degrees 30 minutes north, "shall be the property of and subject to the disposition of the state of Kentucky," such lands were "granted by this state," within the meaning and protection of the statute of limitations applicable to lands granted by the state of Tennessee. Sharp v. Vanwinkle, 80 Tenn. 15, 1883 Tenn. LEXIS 134 (1883); American Asso. v. Williams, 166 F. 17, 1908 U.S. App. LEXIS 4831 (6th Cir. Tenn. 1908).

4-2-105. Georgia boundary.

The boundary line between this state and the state of Georgia begins at a point in the true parallel of the thirty-fifth degree of north latitude, as found by James Carmack, mathematician on the part of the state of Georgia, and James S. Gaines, mathematician on the part of this state, on a rock about two feet (2′) high, four inches (4″) thick, and fifteen inches (15″) broad, engraved on the north side thus: "June 1st, 1818, Var. 6¾ East," and on the south side thus: "Geo. 35 North, J. Carmack," which rock stands one (1) mile and twenty-eight (28) poles from the south bank of the Tennessee River, due south from near the center of the old Indian town of Nick-a-Jack, and near the top of the Nick-a-Jack Mountain at the supposed corner of the states of Georgia and Alabama; thence running due east, leaving old D. Ross two (2) miles and eighteen (18) yards in this state, and leaving the house of John Ross about two hundred (200) yards in the state of Georgia, and the house of David McNair one (1) mile and one-fourth (¼) of a mile in this state, with blazed and mile-marked trees, lessening the variation of the compass by degrees, closing it at the termination of the line on the top of the Unicoi Mountain at five and one-half degrees (5½°).

History.

Code 1858, § 67; Shan., § 78; Code 1932, § 89; T.C.A. (orig. ed.), § 4-205.

Textbooks.

Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1.

Law Reviews.

Crossing the Line: Does the Georgia Plan to Redraw the Tennessee-Georgia Border Pass Legal Muster? (Crews Townsend, Zachary H. Greene, Alison Martin, Robert F. Parsley and Joseph Y. McCoin III), 44 Tenn. B.J. 14 (2008).

4-2-106. Mississippi boundary.

The boundary line between this state and the state of Mississippi begins at a point on the west bank of the Tennessee River, six (6) four-pole chains south or above the mouth of Yellow Creek, and about three-quarters (¾) of a mile north of the line known as Thompson's line, and twenty-six (26) chains and ten (10) links north of Thompson's line, at the basis meridian of the Chickasaw surveys, and terminating at a point on the east bank of the Mississippi River, opposite Cow Island, sixteen (16) chains north of Thompson's line, being the

line marked by commissioners appointed for the two (2) states, as the thirty-fifth degree of north latitude.

History.
Code 1858, § 68 (deriv. Acts 1837-1838, ch. 7); Shan., § 79; Code 1932, § 90; T.C.A. (orig. ed.), § 4-206.

Textbooks.
Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1.

NOTES TO DECISIONS

1. Land in Disputed Territory.
In proceeding in Mississippi court seeking cancellation of defendant's claim to certain lands that complainants alleged lay entirely in Mississippi but that defendant alleged lay partially in Tennessee, records of proceedings in Tennessee court in which the location of the state boundary was involved should have been admitted in evidence to refute complainants' claim as to the location of the boundary. Brown v. Jarratt, 228 Miss. 338, 87 So. 2d 874, 1956 Miss. LEXIS 521 (1956).

4-2-107. Missouri and Arkansas boundaries.

The western boundary of this state is the middle of the stream of the Mississippi River, including within this state all such islands as are held under grants from the states of Tennessee and North Carolina.

History.
Code 1858, § 69; Shan., § 80; Code 1932, § 91; T.C.A. (orig. ed.), § 4-207.

Cross-References.
Criminal jurisdiction over Mississippi River, §§ 4-1-103, 4-1-104.

Textbooks.
Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1; 22 Tenn. Juris., State, § 4.

NOTES TO DECISIONS

Analysis

1. Boundary.
2. Avulsion.

1. Boundary.
The boundary line between Arkansas and Tennessee, changes by avulsion disregarded, is the middle of the main navigable channel of the Mississippi River, in the absence of a special convention between such states, or long use equivalent thereto. Arkansas v. Tennessee, 246 U.S. 158, 38 S. Ct. 301, 62 L. Ed. 638, 1918 U.S. LEXIS 1531 (1918).

The boundary line is the middle of the main channel of navigation of the Mississippi River (as distinguished from a line midway between the visible and fixed banks of the stream) as it was at the time when the current ceased to flow therein as a result of the avulsion of 1876, and without regard to changes in the banks or channel that had occurred through the natural and gradual processes of erosion and accretion prior to the avulsion. Cissna v. Tennessee, 246 U.S. 289, 38 S. Ct. 306, 62 L. Ed. 720, 1918 U.S. LEXIS 1547 (1918).

2. Avulsion.
The change made in its channel by the Mississippi River in 1876 at Centennial Cut-Off was an avulsion and the boundary line between the states of Tennessee and Arkansas remained where it was originally fixed, in the middle of the abandoned channel. Stockley v. Cissna, 119 Tenn. 135, 104 S.W. 792, 1907 Tenn. LEXIS 5 (1907); Laxon v. State, 126 Tenn. 302, 148 S.W. 1059, 1912 Tenn. LEXIS 55 (Tenn. Apr. 1912).

When a navigable stream forming the boundary line between states, from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the boundary line between the states is unaffected and remains in the middle of the former main channel of navigation. Arkansas v. Tennessee, 246 U.S. 158, 38 S. Ct. 301, 62 L. Ed. 638, 1918 U.S. LEXIS 1531 (1918).

Where a running stream forms an interstate boundary, if the bed and channel are changed by the natural and gradual processes of erosion and accretion, the boundary follows the varying course of the stream; while if the stream suddenly leaves its old bed and forms a new one, the resulting change of channel works no change of boundary, which remains in the middle of the old channel although no water is flowing in it. Cissna v. Tennessee, 246 U.S. 289, 38 S. Ct. 306, 62 L. Ed. 720, 1918 U.S. LEXIS 1547 (1918).

CHAPTER 3

CREATION, ORGANIZATION AND POWERS OF ADMINISTRATIVE DEPARTMENTS AND DIVISIONS

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4-3-605. Organization of department.
4-3-606. Powers and duties of department.
4-3-607. Record of transactions.
4-3-608. Local jails — Approval of construction plans.
4-3-609. Exercise of police powers by employees.
4-3-610. Assistance in acquiring dogs for detection of drugs.
4-3-611. Disclosure of the death of persons in the custody of the department of correction.
4-3-612. Contribution to funeral expenses of correctional employee killed in line of duty.

Part 7. Department of Economic and Community Development

4-3-701. Creation.
4-3-702. Commissioner.
4-3-703. General functions.
4-3-704. Divisions — Creation.
4-3-705. Administrative and support services division — Functions.
4-3-706. Industrial development — Powers and duties.
4-3-707. Industrial development authority — Transfer of duties.
4-3-708. Broadband accessibility grant program.
4-3-709. Designation as broadband ready community.
4-3-710 — 4-3-713. [Reserved.]
4-3-714. Legislative intent — Reports.
4-3-715. Short title — Purpose.
4-3-716. FastTrack infrastructure development and job training assistance and economic development fund — Funding — Uses of fund — Legislative intent.
4-3-717. Grants and loans.
4-3-718. Propelling rural economic progress (P.R.E.P.) fund.
4-3-719. Grants from the P.R.E.P. fund.
4-3-720. Short title — Purpose — Contributions made by governmental entity pursuant to master development plan.
4-3-721. Report relating to disaster resilience.
4-3-722. [Expired.]
4-3-723 — 4-3-726. [Reserved.]
4-3-727. Local government planning advisory committee.
4-3-728. Community development block grants to disadvantaged businesses.
4-3-729. [Reserved.]
4-3-730. Records open to public inspection — Exceptions.
4-3-731. Execution of a separate agreement when grant or loan contract reserves right of recovery if person or entity fails to fulfill commitments — Execution of separate agreement in conjunction with capital grant contract — Reports.
4-3-732. Enhanced policymaking role for minority business.
4-3-733. Historically black college or university consortium or technology partnership — Memorandum of cooperation.
4-3-734. Minimum energy conservation standards — New residential building construction.
4-3-735. Energy efficiency and environmental building standards.
4-3-736. Authority of department of economic development to allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among counties and large municipalities.

Section
4-3-737. Small business incentive.
4-3-738. Made in Tennessee Act — Encourage producers and promotion of Tennessee products.

Part 8. Department of Education

4-3-801. Creation.
4-3-802. Commissioner — Qualifications — Appointment.
4-3-803. Offices — Powers and duties.

Part 9. [Reserved]

Part 10. Department of Finance and Administration

4-3-1001. Creation.
4-3-1002. Commissioner.
4-3-1003. Establishment and transfer of divisions.
4-3-1004. [Repealed.]
4-3-1005. [Reserved.]
4-3-1006. Budget powers.
4-3-1007. Accounting powers.
4-3-1008. Preparation of uniform rules and regulations for payment of travel expenses for officers and employees.
4-3-1009. Powers relating to public buildings and property.
4-3-1010. Posting of report of travel and expense reimbursements on state website.
4-3-1011. Background checks of certain employees and contractors.
4-3-1012. Transfer of office of energy management functions relating to state buildings and state-owned facilities.
4-3-1013. Authority to develop prescription drug programs and to contract with pharmacy benefits managers (PBMs).
4-3-1014. Authority to create prescription drug purchase program.
4-3-1015. [Repealed.]
4-3-1016. Restrictions on carry forwards and transfers of funds to the state general fund.
4-3-1017. Energy management program — Development and implementation through the state building energy management program.
4-3-1018. Energy management program — Liaisons — Action — Reevaluation.
4-3-1019. Energy management program — Interagency cooperation.
4-3-1020. Energy management program — Expenditure of federal funds.
4-3-1021. Monitoring and auditing of pharmacy benefits manager's compliance with state pharmacy benefits management contract.
4-3-1022. Control of state portal — E-commerce payment activity assessment — Annual report — Liability for underlying obligation.

Part 11. Department of General Services

4-3-1101. Creation.
4-3-1102. Commissioner.
4-3-1103. General functions.
4-3-1104. Divisions — Creation.
4-3-1105. Powers and duties.
4-3-1106. Special police commissions.
4-3-1107. Display of vehicle abuse hotline decal on vehicles managed by department of general services.
4-3-1108. [Reserved.]
4-3-1109. Energy efficient state vehicles.
4-3-1110, 4-3-1111. [Reserved.]
4-3-1112. Rain forest materials and products — Study of purchases — Reduction or elimination.
4-3-1113. Lighting of Tennessee Tower.
4-3-1114. Emergency keyed lock boxes next to functioning elevators.

Part 12. Department of Human Services

4-3-1201. Creation.
4-3-1202. Commissioner.
4-3-1203. General functions of department.
4-3-1204. Duties of commissioner.
4-3-1205. Definitions for §§ 4-3-1205 – 4-3-1208.

Section
4-3-1206. Performance bond — Requirements — Exceptions.
4-3-1207. Background checks.
4-3-1208. Authority to obtain state and national history background checks on employees and contractors with access to individuals with disabilities.

Part 13. Department of Commerce and Insurance

4-3-1301. Creation.
4-3-1302. Commissioner.
4-3-1303. Divisions — Creation.
4-3-1304. Administration of regulatory boards — Notification of vacancy — Termination of regulatory board — Exemption from licensure requirements.
4-3-1305. Safeguards for retirement living facilities guaranteeing continued medical care and services — Regulations — Actions.
4-3-1306. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.

Part 14. Department of Labor and Workforce Development

4-3-1401. Short title.
4-3-1402. Purpose and intent.
4-3-1403. Creation of department.
4-3-1404. Purpose and goals of the department.
4-3-1405. Powers of the department.
4-3-1406. Commissioner.
4-3-1407. Powers and duties of commissioner.
4-3-1408. Divisions — Creation — Office of administrator.
4-3-1409. Independence of the bureau of workers' compensation — Bureau under the charge and general supervision of the administrator of the bureau — Powers and duties of administrator —Appointment of administrator.
4-3-1410. Funds.
4-3-1411. Orders, rules and regulations, decisions and policies.
4-3-1412. Nondiscrimination.
4-3-1413. [Reserved.]
4-3-1414. Notice of entitlement to have state pay health insurance premium.
4-3-1415. Maintenance and expenditure of funds.
4-3-1416. Distribution of sexual harassment rules.
4-3-1417. Discrimination prohibited.
4-3-1418. [Reserved.]
4-3-1419. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.
4-3-1420. We Want to Learn English Initiative.
4-3-1421. Program for payment of the cost of licensing tests for adult students with financial need.
4-3-1422. Lois M. DeBerry Alternative Diploma Act — Assessments that lead to high school equivalency credential.

Part 15. Legal Department

4-3-1501. Creation.
4-3-1502. Attorney general and reporter.
4-3-1503. Powers and duties.

Part 16. Department of Mental Health and Substance Abuse Services

4-3-1601. Creation — General functions.
4-3-1602. Commissioner.
4-3-1603. Powers and duties.

Part 17. Department of Human Resources

4-3-1701. Creation.
4-3-1702. Commissioner.
4-3-1703. Powers and duties.

Part 18. Department of Health

4-3-1801. Creation.
4-3-1802. Commissioner.

Section
4-3-1803. Powers and duties.

Part 19. Department of Revenue

4-3-1901. Creation — Organization.
4-3-1902. Commissioner.
4-3-1903. Powers and duties.

Part 20. Department of Safety

4-3-2001. Creation.
4-3-2002. Commissioner.
4-3-2003. Highway patrol duties.
4-3-2004. Notary powers of department employees.
4-3-2005. Hearing officers — Review of initial orders.
4-3-2006. Division of protective services.
4-3-2007. Rules and regulations regarding motor vehicles.
4-3-2008. Subpoena to institutions of higher education — Information related to nonimmigrant students in possession of F-1 or M-1 student visa.
4-3-2009. Rules and regulations regarding administration.
4-3-2010. Division of motor vehicle enforcement — Duties — Odometer fraud.
4-3-2011. Organ and tissue donor registry.
4-3-2012. Rules and regulations regarding motor carriers.
4-3-2013. Required driving under the influence information to be posted on website of department.
4-3-2014. [Reserved.]
4-3-2015. Memorandum of understanding with United States department of homeland security concerning enforcement of federal immigration laws.
4-3-2016. Connecting cell phone callers to the nearest highway patrol dispatcher through *THP (*847) program.
4-3-2017. Authority to enter into agreements with nonprofit organizations to promote and support goals and objectives of agency.
4-3-2018. Authority of department regarding statewide P25 interoperable communications system.
4-3-2019. State facility protection officers.

Part 21. Department of State

4-3-2101. Creation — Secretary of state as chief officer.
4-3-2102. Department and secretary subject to general laws.
4-3-2103. Administrative attachment of state election commission.

Part 22. Department of Tourist Development

4-3-2201. Creation — Commissioner as chief administrator.
4-3-2202. Appointment of commissioner — Qualifications.
4-3-2203. Divisions — Creation.
4-3-2204. Tourism division — Creation — Director — Personnel — Duties.
4-3-2205. [Reserved.]
4-3-2206. Powers and duties of commissioner.
4-3-2207. Regional tourist promotion — State assistance.
4-3-2208. Annual appropriation — Expenditure.
4-3-2209. Welcome centers and rest stops — Development of promotional content and training.
4-3-2210. Marketing of Reelfoot Lake as Tennessee Heritage Site.

Part 23. Department of Transportation

4-3-2301. Creation.
4-3-2302. Commissioner — Qualifications — Appointment — Salary — Vacancy or absence.
4-3-2303. Powers and duties of commissioner.
4-3-2304. Accessible transportation and mobility.
4-3-2305. Compliance.
4-3-2306. Transportation Information Planning Act of 2001.
4-3-2307. Travel and tourism signage programs.
4-3-2308. Sponsorship program for welcome centers or rest areas.
4-3-2309. Commercial advertising on the exterior of incident response HELP trucks.

Section
4-3-2310. Commercial advertising on the Tennessee 511 system.
4-3-2311. Special committee to study improvement of transportation services.
4-3-2312. Power of commissioner to enter into contracts for the purpose of stabilizing expenses for purchase of gasoline, diesel, or other fuels. [Expiration of section, see subsection (e).]
4-3-2313. Aeronautics economic development fund.
4-3-2314. Grants from aeronautics economic development fund.

Part 24. Department of the Treasury

4-3-2401. Creation — State treasurer as chief officer.
4-3-2402. Department and treasurer subject to general laws.
4-3-2403. Division of retirement — Retirement systems attached to division.
4-3-2404. State building commission personnel.

Part 25. Department of Veterans Services

4-3-2501. Creation.
4-3-2502. Commissioner.
4-3-2503. Powers and duties.
4-3-2504. Youth programs — Department's activity restricted.

Part 26. [Reserved]

Part 27. Department of Intellectual and Developmental Disabilities

4-3-2701. Creation — General functions.
4-3-2702. Commissioner.
4-3-2703. Powers and duties.
4-3-2704. Construction with federal law, rule or regulation.
4-3-2705. Transfer to the department of intellectual and developmental disabilities.
4-3-2706. Continuing effect of contracts and leases.
4-3-2707. Authority of the department.
4-3-2708. Continuing effect of current rules, regulations, orders, decisions and policies.
4-3-2709. Construction of part.
4-3-2710. No reimbursement for travel expenses — Exhaustion of existing supplies and materials.
4-3-2711. Council on autism spectrum disorder.

Part 28. Nonprofit Organization for Support and Enhancement of Volunteer Tennessee

4-3-2801. Creation of a nonprofit citizen support organization.
4-3-2802. Part definitions.
4-3-2803. Agreement with citizen support organization.
4-3-2804. Activities.
4-3-2805. Use of property and facilities of the Volunteer Tennessee program.
4-3-2806. Assistance by the commissioner.
4-3-2807. Audits — Books and records.
4-3-2808. Gifts and donations.
4-3-2809. Dissolution.
4-3-2810. Rules and regulations.

Part 29. [Reserved]

Part 30. Human Trafficking Advisory Council

4-3-3001. Human trafficking advisory council — Purpose — Meetings.
4-3-3002. Advisory council.
4-3-3003. Poster design — Display in welcome centers.

Parts 31-48. [Reserved]

Part 49. Tennessee Visual Content Modernization Act of 2018

4-3-4901. Short title — Purpose.
4-3-4902. Part definitions.
4-3-4903. Tennessee film/TV incentive fund.

Part 50. Tennessee Film, Entertainment and Music Commission Act of 1987

4-3-5001. Short title.
4-3-5002. Part definitions.

Section
4-3-5003. Creation of commission — Executive director.
4-3-5004. Members — Advisory council.
4-3-5005. Purpose of commission — Rules and regulations.
4-3-5006. Use and disclosure of information.

Part 51. State Board of Equalization

4-3-5101. Members — Appointment — Terms.
4-3-5102. Chair and vice chair.
4-3-5103. Powers and duties of board.
4-3-5104. Executive secretary — Appointment.
4-3-5105. Powers and duties of executive secretary.
4-3-5106. Employment of personnel.

Part 52. [Reserved]

Part 53. [Reserved]

Part 54. Tennessee Sports Hall of Fame Act of 2019

4-3-5401. Short title.
4-3-5402. Part definitions.
4-3-5403. Creation and administration — Examination and audit.
4-3-5404. Existing board vacated — Creation of new board — Members — Term of office — Meetings — Executive director.
4-3-5405. Duties of board — Plan of operation.
4-3-5406. Purposes of the hall of fame — Commissioner facilitation.
4-3-5407. Powers of the commissioner.

Part 55. Information Systems Council

4-3-5501. Establishment — Membership — Appointment — Compensation.
4-3-5502. Duties and responsibilities.
4-3-5503. Staffing — Division of strategic technology solutions.
4-3-5504. Policymaking authority — Legislative intent.
4-3-5505. Disposition of surplus computers.
4-3-5506. Leasing of state communications services.
4-3-5507. Licensure or sale of state information systems.
4-3-5508. Information systems council creation and functions.
4-3-5509. Conduct of meetings with subject matter open to the public and confidential.
4-3-5510 — 4-3-5524. [Reserved.]
4-3-5525. Part definitions.

PART 1

GENERAL PROVISIONS

4-3-101. Administrative departments and divisions — Creation.

There are created and established the following administrative departments of state government:

(1) Department of agriculture;
(2) Department of audit;
(3) Department of children's services;
(4) Department of commerce and insurance;
(5) Department of correction;
(6) Department of economic and community development;
(7) Department of education;
(8) Department of environment and conservation;
(9) Department of finance and administration;
(10) Department of financial institutions;

(11) Department of general services;
(12) Department of health;
(13) Department of human resources;
(14) Department of human services;
(15) Department of intellectual and developmental disabilities;
(16) Department of labor and workforce development;
(17) Department of mental health and substance abuse services;
(18) Department of revenue;
(19) Department of safety;
(20) Department of state;
(21) Department of tourist development;
(22) Department of transportation;
(23) Department of the treasury;
(24) Department of veterans services; and
(25) Legal department.

History.

Acts 1923, ch. 7, §§ 1, 24; Shan. Supp., §§ 373a30, 373a62; Acts 1929, ch. 22, § 1; Code 1932, §§ 255, 286, 9950; Acts 1933, ch. 92, § 1(12); 1937, ch. 33, §§ 1, 5, 15, 31; 1939, ch. 11, §§ 1, 10, 16; 1945, ch. 28, § 1; 1945, ch. 34, § 1; 1945, ch. 40, § 1; 1947, ch. 29, § 10; C. Supp. 1950, §§ 255.1, 255.5, 255.15; Acts 1953, ch. 27, § 1; 1953, ch. 163, § 1; 1955, ch. 102, § 1; 1959, ch. 9, §§ 2, 3, 5-7, 9, 11, 14; 1961, ch. 97, §§ 1, 5; 1963, ch. 169, §§ 1, 3; 1971, ch. 137, § 1; 1972, ch. 543, §§ 3, 7, 10; 1972, ch. 829, § 18; 1972, ch. 852, §§ 4, 15; 1973, ch. 294, § 2; 1975, ch. 219, § 1(a); 1975, ch. 248, § 1(a); 1975, ch. 249, § 1(a); 1976, ch. 468, § 3; T.C.A. (orig. ed.), § 4-301; Acts 1983, ch. 216, § 1; 1983, ch. 311, § 1; 1983, ch. 472, § 1; 1989, ch. 278, § 16; 1991, ch. 289, § 1; 1991, ch. 448, § 1; 1996, ch. 1079, § 17; 1999, ch. 520, §§ 15, 16; 2000, ch. 947, § 6; 2007, ch. 60, § 1; 2010, ch. 1100, §§ 3, 4; 2012, ch. 575, § 1; 2015, ch. 24, §§ 3, 7.

Compiler's Notes.

The department of agriculture, created by this section and § 4-3-201, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

The department of children's services, created by this section and § 37-5-101, terminates June 30, 20231. See §§ 4-29-112, 4-29-244.

The department of commerce and insurance, created by this section and § 4-3-1301, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

The department of correction, created by this section and § 4-3-601, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

The department of economic and community development, created by this section and § 4-3-701, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

The department of education, created by § 4-3-801 and this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

The department of environment and conservation, created by this section and § 4-3-501, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

The department of finance and administration, created by this section and § 4-3-1001, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

The department of financial institutions, created by this section and § 4-3-401, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

The department of general services, created by this section and § 4-3-1101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

The department of health, created by this section and § 4-3-1801, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

The department of human resources, created by this section and § 4-3-1701, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

The department of human services, created by this section and § 4-3-1201, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

The department of intellectual and developmental disabilities, created by this section and § 4-3-2701, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

The department of labor and workforce development, created by this section and § 4-3-1403, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

The department of mental health and substance abuse services, created by this section and § 4-3-1601, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

The department of revenue, created by this section and § 4-3-1901, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

The department of safety, created by this section and § 4-3-2001, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2014, ch. 773, § 3 provided that the division of state audit shall return to the de-

partment of safety in 2016 for the purpose of conducting a limited audit to review actions taken by the department to address the issues raised in the findings of the October 2013 performance audit report. The division of state audit shall complete the limited audit within a period sufficient to allow for its review by the government operations joint subcommittee on judiciary and government no later than December 1, 2016.

The department of tourist development, created by this section and § 4-3-2201, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

The department of transportation, created by this section and § 4-3-2301, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

The department of veterans services, created by this section and § 4-3-2501, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

For transfer of certain TennCare-related functions from the department of finance and administration to the department of health. See Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2011, ch. 476, § 3 provided that the division of state audit in the office of the comptroller of the treasury shall provide its findings to the house of representatives and senate government operations committees by July 1, 2013, on the department of education's responses to the findings and recommendations in the January, 2011, performance audit of the department of education.

Acts 2015, ch. 18, § 3 provided that the Department of Health shall appear before the Government Operations Joint Evaluation Committee on Education, Health and General Welfare no later than December 31, 2015, to update the Committee on the Department's progress in addressing the findings set forth in the November 2014 performance audit report.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Acts 2015, ch. 63, § 3 provided that the department of correction shall appear before the government operations joint evaluation committee on judiciary and government no later than October 1, 2015, to update the committee on the department's progress in addressing the findings set forth in the September 2014 performance audit report.

Acts 2015, ch. 129, § 3 provides that the Department of Education shall appear before the Government Operations Joint Evaluation Committee on Education, Health and General Welfare no later than December 1, 2015, to update the Committee on the Department's progress in addressing the findings set forth in the November 2014 performance audit report.

Acts 2019, ch. 336, § 3 provides that the department of education shall appear before the government operations joint evaluation committee on education, health and general welfare no later than March 15, 2019, to update the committee on the department's progress in addressing the findings set forth in the December 2018 performance audit report.

Cross-References.

Annual departmental reports prepared by administrative department head, § 4-4-114.

Department of agriculture created, § 4-3-201.

Department of audit created, § 4-3-301.

Department of children's services created, § 37-5-101.

Department of commerce and insurance created, § 4-3-1301.

Department of correction created, § 4-3-601.

Department of economic and community development created, § 4-3-701.

Department of education created, § 4-3-801.

Department of environment and conservation created, § 4-3-501.

Department of finance and administration created, § 4-3-1001.

Department of financial institutions created, § 4-3-401.

Department of general services created, § 4-3-1101.

Department of health created, § 4-3-1801.

Department of human resources created, § 4-3-1701.

Department of human services created, § 4-3-1201.

Department of intellectual and developmental disabilities created, § 4-3-2701 et seq.

Department of labor and workforce development created, § 4-3-1403.
Department of mental health and substance abuse services, § 4-3-1601.
Department of revenue created, § 4-3-1901.
Department of safety created, § 4-3-2001.
Department of state created, § 4-3-2101.
Department of the treasury created, § 4-3-2401.
Department of tourist development created, § 4-3-2201.
Department of transportation created, § 4-3-2301.
Department of veterans services created, § 4-3-2501.
Legal department created, § 4-3-1501.

Textbooks.
Tennessee Jurisprudence, 5 Tenn. Juris., Boundaries, § 1; 22 Tenn. Juris., State, § 5.

Law Reviews.
The Independent Agency After Bowsher v. Synar — Alive and Kicking, 40 Vand. L. Rev. 903 (1987).

4-3-102. Control of state buildings.

Notwithstanding any other law to the contrary, the legislative branch of state government and the judicial branch of state government maintain control of the state buildings occupied predominantly by the legislative branch and the judicial branch, respectively.

History.
Acts 2016, ch. 1031, § 1.

Compiler's Notes.
Former § 4-3-102 (Acts 1965, ch. 244, §§ 1, 2; 1970, ch. 477, §§ 1-3), concerning the staff division for urban and federal affairs, was repealed by Acts 1980, ch. 572, § 1, effective July 1, 1980.

4-3-103. Powers and duties of departments.

These departments shall be vested respectively with such powers and required to perform such duties as are set forth in this chapter and shall be charged with the administration, execution and performance of such laws as the general assembly may enact from time to time.

History.
Acts 1923, ch. 7, § 1; Shan. Supp., § 373a31; Code 1932, § 25; Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; C. Supp. 1950, § 255.1; T.C.A. (orig. ed.), § 4-301.

4-3-104. Name changes of departments and divisions.

(a) References appearing elsewhere in this code to the department of accounts, the department of the budget or to the office of the state property administrator are deemed references to the department of finance and administration.

(b) References to the department of finance and taxation are deemed references to the department of revenue.

(c) References to the department of highways and public works when relating to public buildings are deemed references to the department of general services.

(d) References to the department of highways and public works, except when relating to public buildings, and references to the bureau of aeronautics, the bureau of highways and the mass transit bureau are deemed references to the department of transportation.

(e) References to the department of institutions are deemed references to the department of correction.

(f) References to the department of insurance and banking are deemed references to the department of commerce and insurance.

(g) References to the department of local finance or division of local finance are deemed references to the office of the comptroller of the treasury.

(h) References to the department of public welfare are deemed references to the department of human services.

(i) References to the department of standards and purchases are deemed references to the department of general services.

(j) References to the staff division of industrial development are deemed references to the industrial development division of the department of economic and community development.

(k) References to the division of hotel and restaurant inspection of the department of conservation are deemed references to the hotel and restaurant division of the department of tourist development.

(*l*) References to the staff division of veterans' affairs and references to the department of veterans' affairs are deemed references to the department of veterans services.

(m) References to the state educational agency for surplus property are deemed references to the department of general services.

(n) References to the tourism development division of the department of economic and community development are deemed references to the tourism division of the department of tourist development.

(o) References to the department of banking are deemed references to the department of financial institutions.

(p) References in title 45, chapter 5, except in § 45-5-304(a)(4), to the department of commerce and insurance are deemed to be references to the department of financial institutions.

(q) References to the department of insurance are deemed references to the department of commerce and insurance.

(r) References to the department of public health are deemed references to the department of health.

(s) References to the department of health and environment are deemed references to the department of health.

(t) References to the department of conservation are deemed references to the department of environment and conservation.

(u) References to the department of labor are deemed references to the department of labor and workforce development.

(v) References to the department of employment security are deemed references to the department of labor and workforce development.

(w) References to the department of personnel are deemed references to the department of human resources.

(x) References to the board of probation and parole are deemed references to the board of parole.

(y) References to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are deemed references to the department of labor and workforce development.

History.

Acts 1955, ch. 102, § 1; 1959, ch. 9, §§ 3, 8, 14; 1961, ch. 97, § 3; 1971, ch. 137, § 1; 1972, ch. 543, §§ 5, 7, 9, 12; 1972, ch. 829, § 7; 1972, ch. 852, § 12; 1975, ch. 219, § 1(b); 1975, ch. 248, §§ 1(b), 1(f); 1975, ch. 249, §§ 1(b), 3; 1976, ch. 468, § 2; T.C.A. § 4-301; Acts 1981, ch. 264, §§ 12, 17, 19, 22; 1983, ch. 216, § 2; 1983, ch. 274, § 22; 1983, ch. 311, § 2; 1983, ch. 442, § 4; 1983, ch. 472, § 2; 1991, ch. 289, § 2; 1991, ch. 448, § 2; 1999, ch. 520, § 17; 2000, ch. 947, § 6; 2007, ch. 60, § 2; 2010, ch. 868, § 2; 2010, ch. 1100 § 5; 2012, ch. 727, § 1; 2015, ch. 24, §§ 5, 7; 2016, ch. 599, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the preamble to the act concerning transfers of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which added subsection (z) (now (x)), shall be fully accomplished on or before January 1, 2013.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

4-3-105. Criminal history investigations of employees and contractors with access to federal tax information.

(a) The administrative departments of state government are authorized, as necessary to comply with internal revenue service Publication 1075, including amendments thereto and publications replacing Publication 1075, to obtain state and national criminal history background checks and investigations performed by the Tennessee bureau of investigation and the federal bureau of investigation on all employees and contractors with access to federal tax information.

(b) An employee or contractor of any administrative department of state government with access to or that uses federal tax information must:

(1) Agree to a local background check and the release of all investigative records to the state government for the purpose of verifying criminal history information; and

(2) Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the Tennessee bureau of investigation, and then submit to a national criminal history background check to be conducted by the federal bureau of investigation.

(c) Except as otherwise provided in this subsection (c), a state administrative department shall pay any costs incurred to conduct background checks and investigations requested by the department. The state administrative department may require a person or entity contracting with the department to pay the costs associated with the background investigations for all employees of the contractor. The requirement may be a condition of the contract with the department. Payment must be made in accordance with § 38-6-103.

(d) Each state administrative department required to conduct background checks and investigations pursuant to this section shall establish written policies concerning the implementation and use of the background checks and investigations conducted pursuant to this section.

History.
Acts 2017, ch. 343, § 1.

4-3-106. Notice of outsourcing of facilities management services — Facilities management status report.

(a) Not less than thirty (30) days before a department or agency of state government executes a state professional facilities management contract for services within a state legislative district that would result in the outsourcing of facilities management services to private, nonstate government entities, the respective department or agency shall notify each member of the general assembly representing such district of the contract.

(b) In addition, on an annual basis, the department of general services shall provide a facilities management status report to the governor, speaker of the senate, and speaker of the house of representatives. The report shall include, but not be limited to, the following information:

(1) The departments or agencies executing a state contract for professional facilities management;

(2) The number of state employees impacted by such contract;

(3) The estimated cost savings of such contract; and

(4) The cost savings realized by any such contract in place for one (1) year or greater.

History.
Acts 2017, ch. 469, § 6.

4-3-107 — 4-3-110. [Reserved.]

4-3-111. Chief executive officers of administrative departments.

There shall be a chief executive officer of each of the administrative departments of state government created by § 4-3-101, which shall be as follows:

(1) Attorney general and reporter, for the legal department;

(2) Commissioner of agriculture, for the department of agriculture;

(3) Commissioner of children's services, for the department of children's services;

(4) Commissioner of commerce and insurance, for the department of commerce and insurance;

(5) Commissioner of correction, for the department of correction;

(6) Commissioner of economic and community development, for the department of economic and community development;

(7) Commissioner of education, for the department of education;

(8) Commissioner of environment and conservation, for the department of environment and conservation;

(9) Commissioner of finance and administration, for the department of finance and administration;

(10) Commissioner of financial institutions, for the department of financial institutions;

(11) Commissioner of general services, for the department of general services;

(12) Commissioner of health, for the department of health;

(13) Commissioner of human resources, for the department of human resources;

(14) Commissioner of human services, for the department of human services;

(15) Commissioner of intellectual and developmental disabilities, for the department of intellectual and developmental disabilities;

(16) Commissioner of labor and workforce development, for the department of labor and workforce development;

(17) Commissioner of mental health and substance abuse services, for the department of mental health and substance abuse services;

(18) Commissioner of revenue, for the department of revenue;

(19) Commissioner of safety, for the department of safety;

(20) Commissioner of tourist development, for the department of tourist development;

(21) Commissioner of transportation, for the department of transportation;

(22) Commissioner of veterans services, for the department of veterans services;

(23) Comptroller of the treasury, for the department of audit;

(24) Secretary of state, for the department of state; and

(25) State treasurer, for the department of treasury.

History.

Acts 1923, ch. 7, §§ 2, 24; 1925, ch. 115, § 4; Shan. Supp., §§ 373a32, 373a62, 1487a19; Acts 1929, ch. 22, § 1; Code 1932, §§ 257, 286, 2310, 9950; Acts 1933, ch. 92, § 1(12); 1937, ch. 33, §§ 2, 15; 1939, ch. 11, §§ 2, 10; 1945, ch. 6, § 1; 1945, ch. 28, §§ 2, 3; 1945, ch. 34, § 2; 1945, ch. 40, § 4; 1947, ch. 29, § 10; C. Supp. 1950, §§ 255.2, 255.15; Acts 1953, ch. 27, § 2; 1953, ch. 163, § 1; impl. am. Acts 1955, ch. 102, § 1; Acts 1959, ch. 9, §§ 2, 3, 5-7, 9, 11, 14; 1961, ch. 97, §§ 2, 5; impl. am. Acts 1963, ch. 169, § 3; Acts 1971, ch. 137, § 2; 1972, ch. 543, §§ 4, 7, 11; 1972, ch. 829, § 19; 1972, ch. 852, §§ 6, 16; 1973, ch. 294, § 3; 1975, ch. 219, § 2(a); 1975, ch. 248, § 1(c); impl. am. Acts 1975, ch. 249, § 1(a); Acts 1976, ch. 468, § 4; T.C.A. (orig. ed.), § 4-302; Acts 1983, ch. 216, § 3; 1983, ch. 311, § 3; 1983, ch. 472, § 3; 1989, ch. 278, § 17; 1991, ch. 289, § 3; 1991, ch. 448, § 3; 1996, ch. 1079, § 18; 1999, ch. 520, § 18; 2000, ch. 947, § 6; 2007, ch. 60, § 3; 2010, ch. 1100, § 6; 2012, ch. 575, §§ 1, 2; 2015, ch. 24, §§ 4, 7.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

NOTES TO DECISIONS

1. Suit Against the State.

Where landowners brought a declaratory judgment action against the commissioner of the department of transportation in his official capacity, it was a suit against the state. Williams v. Nicely, 230 S.W.3d 385, 2007 Tenn. App. LEXIS 111 (Tenn. Ct. App. Feb. 28, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 621 (Tenn. June 25, 2007).

4-3-112. Appointment of commissioners.

(a) The commissioners shall be appointed by the governor for terms to expire with the beginning of the term of the governor next elected, or whenever their successors shall be appointed and qualified.

(b) Each commissioner shall hold office at the pleasure of the governor.

History.
Acts 1923, ch. 7, § 2; Shan. Supp., § 373a33; Acts 1933, ch. 92, § 1(1); 1935, ch. 169, § 1; Code 1932, § 258; Acts 1937, ch. 33, § 2; 1939, ch. 11, § 2; C. Supp. 1950, § 255.2; T.C.A. (orig. ed.), § 4-302.

4-3-113. Name changes of departments, directors and commissioners.

(a) References appearing elsewhere in this code to the director of accounts, the director of the budget or to the state property administrator are deemed references to the commissioner of finance and administration.

(b) References to the superintendent of banks, to the superintendent of banking or to the commissioner of banking are deemed references to the commissioner of financial institutions.

(c) References to the commissioner of finance and taxation are deemed references to the commissioner of revenue.

(d) References to the commissioner of highways and public works, when relating to public buildings, are deemed references to the commissioner of general services.

(e) References to the commissioner of highways and public works, except when relating to public buildings, and references to the director of the bureau of aeronautics, the director of the bureau of highways, and the director of the mass transit bureau are deemed references to the commissioner of transportation.

(f) References to the commissioner of institutions are deemed references to the commissioner of correction.

(g) References to the commissioner of insurance and banking are deemed references to the commissioner of commerce and insurance.

(h) References to the state director of local finance, director of local finance, state director of the division of local finance or to the director of the division of local finance are deemed references to the comptroller of the treasury.

(i) References to the commissioner of public welfare are deemed references to the commissioner of human services.

(j) References to the commissioner of standards and purchases are deemed references to the commissioner of general services.

(k) References to the director of the staff division of industrial development are deemed references to the director of the industrial development division of the department of economic and community development.

(*l*) References to the director of the division of hotel and restaurant inspection of the department of conservation are deemed references to the commissioner of tourist development.

(m) References to the director of veterans' affairs and references to the commissioner of veterans' affairs are deemed references to the commissioner of veterans services.

(n) References to the assistant commissioner of the tourism development

division in the department of economic and community development are deemed references to the commissioner of tourist development.

(o) References to the commissioner of insurance are deemed references to the commissioner of commerce and insurance.

(p) References to the commissioner of public health are deemed references to the commissioner of health.

(q) References to the commissioner of health and environment are deemed references to the commissioner of health.

(r) References to the commissioner of conservation are deemed references to the commissioner of environment and conservation.

(s) References to the department of employment security are deemed references to the department of labor and workforce development.

(t) References to the department of labor are deemed references to the department of labor and workforce development.

(u) References to the commissioner of personnel are deemed references to the commissioner of human resources.

History.

Acts 1955, ch. 102, § 1; 1959, ch. 9, §§ 3, 8, 14; 1961, ch. 97, § 3; 1971, ch. 137, § 2; 1972, ch. 543, §§ 5, 7, 12; 1972, ch. 829, § 7; 1972, ch. 852, § 12; 1973, ch. 294, § 5; 1975, ch. 219, § 2(b); 1975, ch. 248, § 1(f); 1975, ch. 249, §§ 2, 3; 1976, ch. 468, § 2; T.C.A., §§ 4-302, 4-332; Acts 1981, ch. 264, §§ 12, 17, 22; 1983, ch. 216, § 4; 1983, ch. 274, § 23; 1983, ch. 311, § 4; 1983, ch. 442, § 5; 1983, ch. 472, § 4; 1991, ch. 289, § 4; 1991, ch. 448, § 4; 1999, ch. 520, § 25; 2007, ch. 60, § 4; 2010, ch. 868, § 3; 2010, ch. 1100, § 7; 2015, ch. 24, §§ 6, 7.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

4-3-114 — 4-3-120. [Reserved.]

4-3-121. Commissioners and staff directors as department and division heads.

(a)(1) The commissioners of the administrative departments of the state government created by this chapter shall be the administrative heads of those departments. They shall have charge and general supervision of their respective departments.

(2) The officers and employees of the various departments established by this chapter shall be under the supervision, direction and control of the commissioners of their respective departments and shall perform such duties as the commissioners may prescribe.

(b)(1) Each staff division of the governor's office shall have as its chief executive officer a staff director who shall be appointed by the governor for a term to expire with the beginning of the term of the governor next elected, or whenever the staff director's successor shall be appointed and qualified,

and who shall hold office at the pleasure of the governor.

(2) Staff directors shall have charge and general supervision of their respective divisions and shall exercise such powers and perform such duties in regard thereto as are vested therein by law, and shall receive compensation in the amount provided by § 8-23-101 for commissioners of departments.

(3) Staff directors, with respect to their divisions, shall be subject to all laws applying generally to commissioners of administrative departments, and staff divisions shall be subject to all laws applying generally to state administrative departments.

History.
Acts 1923, ch. 7, § 3; Shan. Supp., § 373a34, 373a35; Code 1932, §§ 259, 260; Acts 1937, ch. 33, § 3; mod. C. Supp. 1950, § 255.3; Acts 1959, ch. 9, § 2; 1963, ch. 169, § 4; T.C.A. (orig. ed.), § 4-303.

4-3-122. Governor's cabinet.

(a) The commissioners of the administrative departments shall constitute a cabinet or advisory staff to the governor on all matters of state administration.

(b) Staff directors may be members of the governor's cabinet or advisory staff, and the secretary of state, the state treasurer and the comptroller of the treasury may also serve on the governor's cabinet or advisory staff if invited to do so by the governor.

(c)(1) The governor shall hold regular meetings of this cabinet each month, or more often at the governor's option.

(2) At these meetings, the administrative work and budgetary requirements of each department shall be discussed, and practical methods devised and applied to further cooperation in, and coordination of, such work, and to eliminate duplication and overlapping of functions between the several departments.

History.
Acts 1937, ch. 33, § 4; mod. C. Supp. 1950, § 255.4; Acts 1959, ch. 9, §§ 2, 10; T.C.A. (orig. ed.), § 4-304.

4-3-123. Commission on aging and disability — Review of agency proposals.

(a) In order to fulfill its duties as established by § 71-2-105, it is essential that the commission on aging and disability have an opportunity to review and comment on proposed plans, programs and rules that may have a substantial and direct effect on persons sixty (60) years of age or older and to be given the opportunity to have its representative in attendance at meetings of administrative departments or agencies of state government that qualify as open meetings as defined in § 8-44-102, at which such matters are intended to be considered. Therefore, the commission through its executive director shall define those areas of concern that affect older Tennesseans and make such areas known to state departments and agencies.

(b) State departments and agencies of state government shall appropriately notify the commission in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, and the procedure for intergov-

ernmental review established by Executive Order No. 58, which took effect October 29, 1983, concerning those areas defined by the commission.

History.
Acts 1984, ch. 943, § 8.

Compiler's Notes.
Substituted "commission on aging and disability" for "commission on aging" pursuant to Acts 2001, ch. 397.

4-3-124. Sexual harassment policy — Posting.

Each entity of state government shall post in the workplace the state policy for the prevention of sexual harassment established pursuant to chapter 307 of the Public Acts of 1993.

History.
Acts 1993, ch. 307, § 1.

Cross-References.
Department of human resources, prevention of sexual harassment, § 4-3-1703.
Office of legislative administration, prevention of sexual harassment, § 3-13-101.
State human rights commission, policy on prevention of sexual harassment, § 4-21-202.
State university and community college system, prevention of sexual harassment, § 49-7-122.
Supreme court, sexual harassment prevention policy for inferior courts, § 16-3-502.

Law Reviews.
What Part of "No" Don't You Understand?: Recent Developments in Workplace Sexual Harassment Law (William D. Evans Jr.), 36 No. 5 Tenn. B.J. 14 (2000).

PART 2

DEPARTMENT OF AGRICULTURE

4-3-201. Creation.

There is hereby created the department of agriculture.

History.
Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; C. Supp. 1950, § 255.1; modified.

Compiler's Notes.
The department of agriculture, created by this section and § 4-3-101, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Cross-References.
Creation of the department of agriculture, § 4-3-101.
Organization, powers and duties of department, title 43, ch. 1.

4-3-202. Commissioner.

The department of agriculture shall be under the charge and general supervision of the commissioner of agriculture.

History.
Acts 1923, ch. 7, § 2; Shan. Supp., § 373a32; Code 1932, § 257; Acts 1937, ch. 33, § 2; 1939, ch. 11, § 2; C. Supp. 1950, § 255.2; modified.

4-3-203. Powers and duties.

The department of agriculture has the power to:

(1) Encourage and promote, in every practicable manner, the interests of agriculture, including horticulture, livestock industry, dairying, poultry

raising, beekeeping, production of wool and other allied industries;

(2) Promote and improve methods of conducting agricultural industries, with a view to increasing the production, and facilitating the distribution, of products at minimum cost;

(3) Collect, publish and distribute statistics relating to crop production and marketing of beef, pork, poultry, fish, mutton, wool, butter, cheese and other agricultural products, so far as such statistical information may be of value to the agricultural and allied interests of the state;

(4) Inquire into the cause of contagious, infectious and communicable diseases among domestic animals, and the means for the prevention and cure of the same;

(5) Assist, encourage and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, stock shows or other exhibits of the products of agriculture;

(6) Cooperate with producers and consumers in devising and maintaining economical and efficient systems of distribution, and to aid in whatever way may be consistent or necessary in accomplishing the reduction of waste and expenses in marketing;

(7) Cooperate with the agricultural college, the experiment stations of the state university and the federal government;

(8) Enter and inspect any rights-of-way of any highway, railway, field, orchard, nursery, fruit packing house, storeroom, depot or other place where fruits are grown or stored, and inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such plant life is infected with pests or with their eggs or larvae, or with any contagious disease injurious to plant life, abate the same as a nuisance;

(9) Enforce all of the penal and regulatory laws of the state in the same manner and with like authority as the sheriffs of the counties; and

(10)(A) Promulgate rules and regulations necessary to effectuate the purposes, duties and responsibilities of the department. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, except as otherwise provided by law.

(B) The enactment of a federal declaration of an extraordinary emergency or issuance of an emergency federal order or similar federal enactment that relates to the spread of plant or animal disease, the spread of pests from state to state, the protection of the food or feed supply, or that otherwise relates matters generally regulated by the department shall be deemed to constitute sufficient evidence of an immediate danger to the public health, safety or welfare of such a nature to justify the enactment of emergency rules for purposes of § 4-5-208(a).

History.

Acts 1923, ch. 7, § 29; Shan. Supp., § 373a71; Code 1932, § 294; impl. am. Acts 1937, ch. 33, § 69; C. Supp. 1950, § 294; Acts 1973, ch. 38, § 1; 1974, ch. 415, § 1; T.C.A. (orig. ed.), § 4-308; Acts 2005, ch. 46, § 1.

Compiler's Notes.

For transfer of the division of forestry in the department of environment and conservation and its related functions and the administration of the Tennessee Forestry Act (title 11, ch. 4) from the department of environment and

conservation to the department of agriculture, see Executive Order No. 41 (February 4, 1991).

Law Reviews.

Bid Protests in Tennessee (Steven W. Feldman), 34 No. 5 Tenn. B.J. 27 (1998).

Attorney General Opinions.

Department of agriculture enforcement agent as law enforcement officer, OAG 99-016, 1999 Tenn. AG LEXIS 35 (2/2/99).

4-3-204. Civil penalty for violating regulatory matters — Revocation of license or permit — Denial of license or permit renewal.

(a) The department or any board or commission attached to the department may, in a lawful proceeding respecting licensing, as defined in the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty of not more than five hundred dollars ($500) for each violation of statute, rule or order enforceable by the department or board or commission attached to the department.

(b) The department and any board or commission attached to the department shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under this section for violation of each statute, rule or order over which it has regulatory control.

(c) In the event of nonpayment of any civil penalty lawfully assessed pursuant to subsection (a), such penalty shall be recoverable in the name of the state by the attorney general and reporter in the chancery court of Davidson County, or by the district attorney general in the chancery court of the county in which all or part of the violation occurred.

(d) All sums recovered under this section shall be paid into the state treasury, except that in those counties where a contract exists between the department and the county health department pursuant to § 53-8-204(7), such sums may be retained by the county health department in accordance with the contract between the department and such county health department; provided, that all such funds so retained by the county health department shall be paid into the county's general fund.

(e) In the event of nonpayment of any civil penalty lawfully assessed by the department or any board or commission attached thereto, the commissioner of agriculture may revoke a current license or permit or deny renewal of a license or permit until the respective civil penalties have been paid in full. Payment of the civil penalty does not necessarily obligate the commissioner to issue any license or permit; provided, no such action affecting licenses or permits shall be taken without a hearing as provided in the Uniform Administrative Procedures Act.

History.

Acts 1988, ch. 878, § 7; 1991, ch. 149, § 1; 2000, ch. 603, § 1.

4-3-205. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.

(a) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 shall notify each applicant for a professional or occupational license, certification or registration

from the department, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies, and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies, and guidelines.

(b) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 shall notify each holder of a professional or occupational license, certification or registration from the department, board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and any board, commission, committee, or other governmental entity created pursuant to titles 43 and 44 shall establish and maintain a link or links on the entity's website to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any board, commission, committee, or other governmental entity created pursuant to this title and titles 43 and 44 shall allow each holder of a professional or occupational license, certification or registration from the department, board, commission, committee, or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and any board, commission, committee or other governmental entity created pursuant to this title and titles 43 and 44 shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

History.

Acts 2008, ch. 1070, § 6; 2012, ch. 952, § 3.

Compiler's Notes.

Acts 2008, ch. 1070, § 13 provided that each entity subject to the act shall promulgate rules to effectuate the purposes of the act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 3

DEPARTMENT OF AUDIT

4-3-301. Creation.

The department of audit is created and established in the state government.

History.
Acts 1937, ch. 33, § 5; mod. C. Supp. 1950, § 255.5; T.C.A. (orig. ed.), § 4-335; T.C.A., § 4-332.

Attorney General Opinions.
Applicability of Open Meetings Act to exit conference with comptroller, OAG 99-090, 1999 Tenn. AG LEXIS 90 (4/12/99).

NOTES TO DECISIONS

1. Rights of Holder.
In an adversary proceeding seeking a determination, pursuant to 11 U.S.C. § 506, of the nature and priority of a lien on the debtor's residential real property, pursuant to T.C.A. § 47-3-301, defendant had the unqualified right to enforce a Note and Deed of Trust because it was the owner and holder of the note in question. The terms of the note contemplated the possibility of transfer and, while the trustee sought to question the validity of certain signatures, the original note contained a blank endorsement by a named individual for which the trustee raised little question as to validity and, mere allegations that the signature was invalid was insufficient under T.C.A. § 47-3-308(a) to overcome the presumption as to its validity. Mostoller v. Saxon Mortg. Servs. (In re Hunter), 466 B.R. 439, 2012 Bankr. LEXIS 514 (Bankr. E.D. Tenn. Feb. 16, 2012).

4-3-302. Administrative head of department.

The comptroller of the treasury shall be the administrative head of this department.

History.
Acts 1937, ch. 33, § 5; mod. C. Supp. 1950, § 255.5; T.C.A. (orig. ed.), § 4-335; T.C.A., § 4-332; modified.

Cross-References.
Comptroller of the treasury as constitutional officer, appointment, Tenn. Const., art. VII, § 3.

Office of local government in office of comptroller, title 4, ch. 16.

4-3-303. Organization of department.

(a) The department of audit shall be organized in whatever manner the comptroller of the treasury may deem best to the accomplishment of its functions.

(b) The department shall have such auditors, assistants and employees as the comptroller of the treasury may require, subject to the budgetary and personnel provisions of § 4-4-107 and within the appropriations made by the general assembly.

History.
Acts 1937, ch. 33, § 71; C. Supp. 1950, § 255.71 (Williams, § 255.76); T.C.A. (orig. ed.), § 4-337.

Cross-References.
Office of local government in office of comptroller, title 4, ch. 16.
Reorganization of divisions, § 4-4-101.

4-3-304. Powers and duties.

The department of audit has the power and is required to:

(1)(A) Perform currently a post audit of all accounts and other financial records of the state government, and of any department, institution, office or agency thereof in accordance with generally accepted auditing standards and in accordance with such procedures as may be established by the comptroller of the treasury;

(B) Make annually, and at such other times as the general assembly shall require, a complete report on the post audit, such report to be in the form provided by §§ 8-4-109 — 8-4-111 and by any subsequent legislation;

(2) Certify to the fund balance sheets, operating and other statements, covering the condition of the state's finances, as prepared by the department of finance and administration, or by the state treasurer, before publication of such statements;

(3) Serve as a staff agency to the general assembly, or to any of its committees, in making investigations of any phase of the state's finances;

(4)(A) Make annually an audit of all the records of the several counties of the state, including the offices of county trustees, circuit court clerks, criminal court clerks, county clerks and clerks and masters of chancery courts, and all county mayors and judges of the courts of general sessions, specifically including the accounts of all "trust funds" in the hands of clerks and masters, or county clerks, or both, and any other county official, whether elected or appointed;

(B) In lieu of the audit required under this subdivision (4), the department may accept an audit made by an independent certified public accountant or licensed public accountant, employed at the expense of the county, if the audit made by such independent certified public accountant or licensed public accountant meets the minimum standards for county auditing established by the comptroller of the treasury, and approved by the governor;

(C) The audit shall be made annually and copies of the audit furnished to the comptroller of the treasury;

(D) Any county having an audit made by an independent certified public accountant or licensed public accountant under the conditions prescribed in this subdivision (4) shall be relieved of paying to the state the fee required by § 9-3-210;

(E) Beginning July 1, 1974, the department shall prepare the audit required under this subdivision (4) in each county of this state at least once in every five-year period, and shall not accept an audit prepared by a certified public accountant or licensed public accountant in lieu of a state audit for more than four (4) years in every five-year period beginning July 1, 1974, or may, in such manner as the comptroller of the treasury may determine, participate with or monitor the audit with the independent certified public accountant or licensed public accountant;

(5) Devise a modern, effective and uniform system of bookkeeping and accounting, subject to the approval of the governor, comprehending:

(A) An efficient system of checks and balances between the officers at the seat of government entrusted with the collections and receipts, custody and disbursement of the revenues of the state; and

(B) A system of bookkeeping and accounting, for the use of all county

officials and agencies handling the revenues of the state or of any political subdivision thereof; provided, that the comptroller of the treasury and the governor may approve any existing system;

(6) Perform economy and efficiency audits, program results audits and program evaluations. Any or all of the elements of an audit may be performed, including financial and compliance, economy and efficiency program results and program evaluation;

(7) Require that audits to be performed by the internal audit staffs of grantees or the internal audit staffs of state departments, boards, commissions, institutions, agencies, authorities or other entities of the state shall be coordinated with the office of the comptroller of the treasury, and any such audit reports as may be issued shall be prepared in accordance with standards established by the comptroller of the treasury. No department, agency, institution, board, commission or authority shall cause internal auditing to be performed by persons who do not meet the job specifications for internal auditors established by the commissioner of human resources and approved by the commissioner of finance and administration and the comptroller. Notwithstanding any law to the contrary, working papers created, obtained or compiled by an internal audit staff are confidential and are therefore not an open record pursuant to title 10, chapter 7. "Working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation by internal audit staff;

(8) Require that all persons, corporations or other entities receiving grants from or through this state shall cause a timely audit to be performed, in accordance with auditing standards prescribed by the comptroller of the treasury; and

(9) Establish minimum standards for the performance of audits by the internal audit staffs of local governments, special taxing districts, utility districts, political subdivisions, state departments, boards, commissions, institutions, agencies, authorities or other entities of the state. These standards, which shall be established by the comptroller of the treasury, shall include "Standards for the Professional Practice of Internal Auditing" published by the Institute of Internal Auditors, Inc., or such other standards as may be approved by the comptroller of the treasury. All audit reports issued by such internal audit staffs shall include a statement that the audit was conducted pursuant to these standards. Notwithstanding any law to the contrary, working papers created, obtained or compiled by an internal audit staff are confidential and are therefore not an open record pursuant to title 10, chapter 7. "Working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation by internal audit staff.

History.

Acts 1937, ch. 33, § 72; 1937, ch. 286, § 1; 1939, ch. 11, § 40; 1941, ch. 96, § 1; C. Supp. 1950, § 255.72 (Williams, § 255.77); Acts 1953, ch. 22, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1974, ch. 616, §§ 1, 2; 1977, ch. 221, §§ 1-3; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1979, ch.

18, § 1; impl. am. Acts 1979, ch. 68, § 3; T.C.A. (orig. ed.), § 4-336; Acts 1984, ch. 794, § 1; 2003, ch. 90, § 2; 2009, ch. 368, §§ 3, 4; 2011, ch. 151, §§ 1, 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Cross-References.

Confidentiality of public records, § 10-7-504.

Examination of accounts of departments, institutions, offices or agencies receiving appropriations from the state, by the department of finance and administration, § 4-3-1007.

Housing development agency, audits, § 13-23-125.

Uncompensated care, § 68-1-109.

Attorney General Opinions.

Inmate funds are required to be handled by the sheriff consistent with the standards established by the state comptroller's county audit division, OAG 06-156, 2006 Tenn. AG LEXIS 176 (10/9/06).

NOTES TO DECISIONS

1. Rights of Sureties of Delinquent Officials.

Requirement for annual audit of books of county officials cannot be pleaded as a defense by sureties in suit to collect shortage of principal, since requirement is solely for the benefit of the state and county. Smith v. State, 194 Tenn. 155, 250 S.W.2d 55, 1952 Tenn. LEXIS 362 (1952).

4-3-305. Administration by comptroller of the treasury.

(a) The comptroller of the treasury is authorized to administer all or any part of the powers and duties prescribed in subsection (b).

(b) The comptroller of the treasury or the comptroller's designee shall, when a general or private act for county budgeting, or a county fiscal control act, is enacted, have authority to:

(1) Prescribe forms and procedures and provide guidance manuals for the preparation of annual budgets in the several counties and in the other local governments;

(2) Require from the proper local authority a copy of the annual budget as adopted by the governing body of each county or other local government;

(3) Prepare a flexible system of uniform accounts for the various counties and for the other local governments, and assist the local authorities in its installation;

(4) Require annually from each county and other local government a financial report, showing in itemized form all expenditures for current operation and maintenance, for capital outlays, for debt retirement and interest charges and for any other expenses, and also setting forth in detail all revenues and other sources of income;

(5) Audit the accounts of all county and other local governments, such audit to be made either by the auditors of the comptroller of the treasury or the comptroller's designee or by private accountants approved by the comptroller of the treasury or the comptroller's designee;

(6) With approval of the state funding board, provide guidance manuals with respect to the issuance of county and municipal notes and bonds, the refunding and retirement of county and municipal debts, and the handling of county or municipal defaults; and

(7) Study the state subsidies and turn-backs to county and other local governments for highway, welfare, educational and other purposes, and

make recommendations to the governor on the fiscal aspects of such subsidies and turn-backs.

(c)(1) Notwithstanding this section or any other law to the contrary, upon the approval of the comptroller of the treasury or the comptroller's designee, a municipality or county is authorized to prepare and adopt a biennial budget for such departments as authorized by the comptroller of the treasury or the comptroller's designee. The budgets shall be prepared as required by the comptroller of the treasury or the comptroller's designee and after all necessary changes have been made to the local government's charter, private acts, resolutions, or ordinances, as appropriate.

(2) In preparing such budgets, careful consideration shall be given to ensure there is no impairment to an existing contract, bond obligation, or anticipation note of the governmental entity.

History.

Acts 1937, ch. 33, § 43; 1939, ch. 11, §§ 10, 24, 25; C. Supp. 1950, § 255.43 (Williams, § 255.44); impl. am. Acts 1959, ch. 9, § 8; T.C.A., § 4-332; T.C.A. (orig. ed.), § 4-333; Acts 1982, ch. 574, § 1; 2004, ch. 436, § 1; 2010, ch. 868, §§ 4-7; 2021, ch. 256, §§ 1-3.

Amendments.

The 2021 amendment, in (b) in the introductory language, substituted "The comptroller of the treasury or the comptroller's designee shall, when a general or private act for county budgeting, or a county fiscal control act, is enacted, have authority to:" for "The comptroller of the treasury or the comptroller's designee shall, when a general act for county budgeting, or a county fiscal control act, is enacted, have authority to:"; in (b)(1), inserted "and provide guidance manuals"; and in (b)(6), substituted "With approval of the state funding board, provide guidance manuals" for "Promulgate regulations" and inserted "notes and".

Effective Dates.

Acts 2021, ch. 256, § 11. April 28, 2021.

Cross-References.

Accounting system, standard for counties, §§ 5-8-501 — 5-8-503.

4-3-306. State funding board.

(a) The state funding board is attached to the office of the comptroller of the treasury for all administrative purposes.

(b)(1) The state funding board is authorized to establish policies and procedures under which the comptroller of the treasury or the comptroller's designee shall be guided in the administration of state laws concerning bond and note issues by counties, municipalities and utility districts.

(2) Noncompliance with subdivision (b)(1) shall not invalidate any bonds issued by a unit of local government.

History.

Acts 1959, ch. 9, § 8; 1978, ch. 864, §§ 1, 2; T.C.A., §§ 4-332, 4-333; Acts 2010, ch. 868, §§ 8, 9.

Cross-References.

State funding board, § 9-9-101.

4-3-307. Expenses of department representatives.

The necessary expenses of any representative of the department of audit assigned to duty away from the seat of government shall be reimbursed under the rules and regulations prescribed by the commissioner of finance and administration. All such expenses, before being paid, shall first be approved by the office of the comptroller of the treasury.

History.
Acts 1923, ch. 92, §§ 1(19), 1(20); Code 1932, § 345; Acts 1933, ch. 92, § 1; mod. C. Supp. 1950, § 345; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; modified; T.C.A. (orig. ed.), § 4-338; T.C.A., § 4-335.

4-3-308. Office of research and education accountability.

(a) There is established within the office of the comptroller of the treasury an office of research and education accountability, which shall conduct research, analyses, evaluations, and other projects as may be assigned to it by the general assembly or the comptroller, or that the office may determine to be necessary to inform discussions and decisions in the general assembly.

(b) The office of research and education accountability shall be accorded access to and may examine any information, records, books, data, or reports maintained by any agency of this state, whether or not the information is subject to public inspection. Each agency shall fully cooperate with the office of research and education accountability in providing such access in the performance of the duties of the office. The office of research and education accountability shall maintain inviolate any privileged or confidential information so acquired and any record or writing so defined by law.

(c) The office of research and education accountability shall report its findings annually to the general assembly.

(d) As used in this section, "agency" means:

(1) Any department, board, commission, institution, office, or agency of state government; and

(2) Any county, county having a metropolitan government, municipality, or other political subdivision of the state, including any school district, school system, or special school district, and the state board of education acting on behalf of any special school listed in § 49-50-1001.

History.
Acts 1992, ch. 535, § 47; 2016, ch. 684, § 1.

Compiler's Notes.
For codification of the Education Improvement Act, Acts 1992, ch. 535, see the Session Law Disposition Table in Volume 13.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

NOTES TO DECISIONS

1. Burden of Proof.
In an adversary proceeding seeking a determination, pursuant to 11 U.S.C. § 506, of the nature and priority of a lien on the debtor's residential real property, pursuant to T.C.A. § 47-3-301, defendant had the unqualified right to enforce a Note and Deed of Trust because it was the owner and holder of the note in question. The terms of the note contemplated the possibility of transfer and, while the trustee sought to question the validity of certain signatures, the original note contained a blank endorsement by a named individual for which the trustee raised little question as to validity and, mere allegations that the signature was invalid was insufficient under T.C.A. § 47-3-308(a) to overcome the presumption as to its validity. Mostoller v. Saxon Mortg. Servs. (In re Hunter), 466 B.R. 439, 2012 Bankr. LEXIS 514 (Bankr. E.D. Tenn. Feb. 16, 2012).

PART 4

DEPARTMENT OF FINANCIAL INSTITUTIONS

4-3-401. Creation.

There is hereby created the department of financial institutions.

History.
Acts 1973, ch. 294, § 2; modified; Acts 1983, ch. 216, § 5.

Compiler's Notes.
The department of financial institutions, created by this section and § 4-3-101, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Cross-References.
Creation of the department of financial institutions, § 4-3-101.
Department of financial institutions, organization, powers and duties, title 45, ch. 1, part 1.

4-3-402. Commissioner — Appointment.

(a) The department of financial institutions shall be under the charge and general supervision of the commissioner of financial institutions.

(b) The commissioner shall be appointed by the governor and shall serve at the governor's pleasure.

History.
Acts 1973, ch. 294, §§ 3, 4; modified; T.C.A., § 4-301; Acts 1983, ch. 216, §§ 6, 7.

Cross-References.
Commissioner of financial institutions, appointment, qualifications, § 45-1-105.

4-3-403. Powers and duties.

The department of financial institutions shall exercise all the rights, powers and duties described in title 45 and otherwise vested by law in the department, the commissioner of financial institutions, and the commissioner's officers, assistants and employees.

History.
Acts 1973, ch. 294, § 7; T.C.A., § 4-344; Acts 1983, ch. 216, § 8.

PART 5

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

4-3-501. Creation.

There is hereby created the department of environment and conservation.

History.
Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; C. Supp. 1950, § 255.1; Acts 1959, ch. 9, § 11; 1963, ch. 169, § 3; modified.

Compiler's Notes.
The department of environment and conservation, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Cross-References.
Creation of the department of environment and conservation, § 4-3-101.
Organization, powers and duties of department, title 11, ch. 1.

4-3-502. Commissioner.

The department of environment and conservation shall be under the charge and general supervision of the commissioner of environment and conservation.

History.
Acts 1937, ch. 33, § 2; 1939, ch. 11, § 2; C. Supp. 1950, § 255.2; Acts 1959, ch. 9, § 11; 1963, ch. 169, § 3; modified.

4-3-503. Establishment of divisions, bureaus and organizational units.

The commissioner is authorized to establish divisions, bureaus or other organizational units necessary to carry out the duties imposed upon the commissioner and the department.

History.
Acts 1959, ch. 9, § 11; impl. am. Acts 1963, ch. 169, § 3; impl. am. Acts 1970, ch. 468, § 1; Acts 1972, ch. 852, § 14; 1976, ch. 468, § 6; T.C.A. (orig. ed.), § 4-317; Acts 1986, ch. 912, § 1; 1992, ch. 693, § 6.

Compiler's Notes.
For transfer of the division of forestry and its related functions and the administration of the Tennessee Forestry Act (title 11, ch. 4) from the department of environment and conservation to the department of agriculture, see Executive Order No. 41 (February 4, 1991).

Cross-References.
Reorganization of divisions, § 4-4-101.

4-3-504. Powers and duties of department.

The department of environment and conservation has the power to:

(1) Exercise all functions, rights, powers, and duties vested by law; and

(2) Make rules and regulations not inconsistent with law for the administration of such functions and duties, and for the management of any parks or other properties belonging to the state.

History.
Acts 1937, ch. 33, § 69; impl. am. Acts 1949, ch. 50, § 1; C. Supp. 1950, §§ 255.62, 5194, 5201.1 (Williams, § 255.72); modified; Acts 1959, ch. 9, § 11; impl. am. Acts 1963, ch. 169, § 3; impl. am. Acts 1970, ch. 468, §§ 1-17; T.C.A. (orig. ed.), § 4-317; Acts 1992, ch. 693, § 7.

Compiler's Notes.
For transfer of the bureau of environment in the department of health and its related functions and the administration of the Tennessee environmental statutes (excluding title 68, chs. 14, 110 and 112) from the department of health to the department of environment and conservation, see Executive Order No. 42 (February 4, 1991).

For transfer of the division of forestry and its related functions and the administration of the Tennessee Forestry Act (title 11, ch. 4) from the department of environment and conservation to the department of agriculture, see Executive Order No. 41 (February 4, 1991).

For the transfer of the responsibility of administering §§ 17(a), 19, 21(d), 26(c), 29, 34, 36(d) and 45 of the Solid Waste Management Act of 1991, Acts 1991, ch. 451, codified as §§ 68-211-822(a), 68-211-823, 68-211-824, 68-211-862(c), 68-211-825, 68-211-828, 68-211-867(d) and 68-211-847, respectively, relative to certain financial assistance programs, from the state planning office to the department of environment and conservation, see Executive Order No. 50 (November 5, 1991).

For the further transfer of administration of certain provisions of the Solid Waste Management Act from the state planning office to the department of environment and conservation, see Executive Order No. 54 (January 7, 1994).

4-3-505. Deputy and assistant commissioners — Absence or incapacity of commissioner — Vacancy in office.

The commissioner is authorized to appoint such deputy and assistant commissioners as may be necessary to discharge the powers and duties of the department. In the event of absence or incapacity of the commissioner or in the

event of a vacancy in the office of the commissioner, an appropriate person designated by the governor may be authorized, in accordance with § 4-4-115, to exercise any and all of the powers of the commissioner until such time as the duly appointed commissioner can fulfill such commissioner's responsibilities.

History.
Acts 1959, ch. 9, § 11; impl. am. Acts 1963, ch. 169, § 3; T.C.A. (orig. ed.), § 4-317; Acts 1992, ch. 693, § 8.

4-3-506. Making completeness determinations and issuing or denying permits within time frame specified in department's rules and regulations.

(a) It is the intent of the general assembly that the department of environment and conservation seek to accomplish making a completeness determination and issuing or denying any permit within the time frames specified by the department's rules and regulations.

(b)(1) The commissioner shall prepare semiannual permitting efficiency reports that include statistics demonstrating whether the department has acted on permit applications within the time frames established by rule. The statistics may be summarized by organizational unit established under § 4-3-503. The reports are due February 1 and August 1 of each calendar year.

(2)(A) The report due February 1 must report data for the first six (6) months of the current fiscal year.

(B) The report due August 1 must report data for the entire previous fiscal year and must also specify any program or system changes to be made if the commissioner determines that program or system changes are necessary to achieve compliance with any time frame.

(3) If a report indicates that a division is not complying with the specified time frames, then the report must include a determination of the cause of the noncompliance.

(4) The reports must be posted on the department's website and electronically submitted to the governor and members of the general assembly.

History.
Acts 2012, ch. 980, § 1; 2020, ch. 593, § 1.

Compiler's Notes.
Former § 4-3-506 (Acts 1978, ch. 730, § 1; T.C.A. (orig. ed.), § 4-317), concerning special police commissions, was repealed by Acts 1986, ch. 912, § 2. For present provisions, see § 11-3-107(b).

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-3-507. [Reserved.]

4-3-508. Contracts and leases entered into prior to July 1, 1991 — Rules, regulations, orders and decisions issued or promulgated by the department.

(a) All contracts or leases entered into prior to July 1, 1991, by the department of environment and conservation or its predecessor in name, the department of conservation, with any entity, corporation, agency, enterprise or person pertaining to § 11-1-108, title 11, chapter 4, §§ 43-14-216, 54-17-105,

54-17-109 and 67-5-1004, shall continue in full force and effect as to all essential terms and conditions of the contracts in existence on July 1, 1991, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of agriculture, unless and until such contracts or leases are amended or modified by the parties to such contracts or leases.

(b) All rules, regulations, orders and decisions heretofore issued or promulgated by the department of environment and conservation or its predecessor in name, the department of conservation, pursuant to § 11-1-108, title 11, chapter 4, §§ 43-14-216, 54-17-105, 54-17-109 and 67-5-1004, shall remain in full force and effect and shall hereafter be administered and enforced by the department of agriculture. To this end, the department of agriculture, through the commissioner, has the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred in § 11-1-108, title 11, chapter 4, §§ 43-14-216, 54-17-105, 54-17-109 and 67-5-1004, to modify or rescind orders or rules and regulations heretofore issued and to adopt, issue or promulgate new orders or rules and regulations necessary for the administration of the programs or functions of the department of agriculture transferred in this section.

History.
Acts 1992, ch. 693, §§ 19, 20.

4-3-509. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, division, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies, and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies, and guidelines.

(b) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall establish and maintain a link or links on the entity's website to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a

holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

History.

Acts 2008, ch. 1070, § 7; 2012, ch. 952, § 4.

Compiler's Notes.

Acts 2008, ch. 1070, § 13 provided that each entity subject to the act shall promulgate rules to effectuate the purposes of the act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-510. Office of energy programs — General powers.

The office of energy programs has the duty and responsibility to:

(1) Promote research, development, recruitment and investments in conservation and renewable technology business (e.g., businesses that are labor intensive, environmentally sound, energy conserving and compatible with the development of a statewide energy program), with the recognition that a commitment to energy efficiency and development of renewable resources promotes economic growth and job creation;

(2) Provide incentives for energy conservation and renewable technologies development;

(3) Provide informational and educational programs for local governmental units and the general public, including the operation of a toll-free energy hotline;

(4) Administer federal energy programs to include, but not be limited to, an energy extension service and a state energy conservation plan.

(5) Promote state and local energy emergency preparedness in coordination with other appropriate state agencies, such as the military department;

(6) Establish a working liaison with the Tennessee Valley authority and other energy-related nonprofit organizations;

(7) Provide technical assistance to state businesses experiencing financial difficulty due to escalating energy costs;

(8) Maintain a record of businesses lost to the state or that have gone out of business due to escalating energy costs; and

(9)(A) Prepare an annual report on the activities of the office of energy programs, including information on conservation, energy management, renewable industry investments and recruitments, and energy savings goals set and realized by the programs administered by the office of energy programs;

(B) The report shall be submitted to the governor, the speakers of the senate and house of representatives, and the chair of the senate and house of representatives committees on government operations, energy, and conservation, or their successor committees.

History.
Acts 1983, ch. 429, § 7; 2000, ch. 561, § 3; 2009, ch. 105, § 1; 2009, ch. 106, § 7; 2016, ch. 743, §§ 2, 11; T.C.A. § 4-3-708.

Compiler's Notes.
Former § 4-3-708 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

4-3-511. Office of energy programs — Powers concerning promoting research and development.

The office of energy programs has the power in promoting research and development to:

(1) Assist the state, its subdivisions and institutions, private parties, and any energy supplier chartered or regulated under this code, through the collection and compilation of information on energy programs throughout the state and the United States, the coordination of research and experimental projects in this state, and contracts and the issuance of grants to Tennessee institutions and citizens for research and experimentation, in the development of:

(A) Petroleum and natural gas storage or production capacity wherever such can be located;

(B) Coal gasification and liquefaction;

(C) Propane, butane or methane storage, shipment, handling and rapid redistribution to areas of need;

(D) An energy port authority in connection with a grouping and system interconnection of energy loading, unloading, storage and transfer facilities;

(E) Magnetohydrodynamics (MHD), fluidized bed combustion and other advanced combustion and conversion facilities;

(F) Technology and related facilities for the collection, conversion and use of solar energy;

(G) Facilities designed to produce central heating, cooling, electrical energy, or process steam through the combustion of garbage or other wastes;

(H) Other energy production, storage or distribution facilities, including co-generation of power; and

(I) Technology and related facilities for the collection, conversion and

use of methane gas. The office of energy programs shall cooperate with the University of Tennessee Space Institute and any other state agency studying the use of methane gas;

(2) Promote and assist in the execution of programs to gain maximum benefit for citizens of Tennessee from the state's natural energy resources, including, but not limited to:

(A) Coal field development and utilization, both surface and subsurface;

(B) Oil deposits;

(C) Natural gas for intrastate and interstate use;

(D) Ores containing fissionable elements;

(E) Geographical characteristics;

(F) Resource recycling; or

(G) Renewable resources;

(3) Coordinate the development of energy facilities in this state; and

(4) Monitor the spending of any public funds provided for projects under this section, and the progress of any work financed in whole or in part with such funds.

History.
Acts 1983, ch. 429, § 7; 1995, ch. 201, § 1; 2016, ch. 743, §§ 3, 11; T.C.A. § 4-3-709.

Compiler's Notes.
Former § 4-3-709 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

4-3-512. Office of energy programs — Powers concerning promoting conservation.

The office of energy programs has the power in promoting conservation to:

(1) Develop and implement plans, projects or programs for the purpose of energy conservation in regard to residential, commercial, industrial or governmental uses of energy;

(2) Coordinate any energy conservation programs or projects undertaken by the state or municipal governments, or by the federal government as permitted by applicable federal law;

(3) Participate in or carry out any federal energy conservation programs;

(4) Recommend, in coordination with other standards and codes, energy and lighting efficiency building standards for new and renovated buildings in this state. Such standards will be mandatory for all building construction or renovation begun after they take effect. Such standards will be administered by local governments, and if such governments have standards equal to or stricter than the authority standards, the local standards will control;

(5) Prepare, implement and administer a plan that encourages utilities to provide conservation services to their customers;

(6) Assist the utilities of the state in their actions before those federal agencies that regulate or otherwise control specific energy supplies, if such actions are consistent with state energy policy;

(7) Coordinate and maintain, in cooperation with other divisions, and state and federal departments and agencies, a comprehensive educational and information program on energy conservation for the general public. The

office of energy programs shall make a continuing effort to keep the citizens of the state informed as to the most efficient and expeditious means of reducing their use of energy; and

(8) Develop and carry out its programs on its own initiative, in cooperation with federal, state or local governments, or with private citizens. Such plans, projects or programs may include, but are not limited to:

(A) Van pooling and car pooling plans and incentives;

(B) Home weatherization;

(C) Development of mass transit alternatives;

(D) Incentives to promote residential conservation of energy use;

(E) Compilation and dissemination of energy efficiency information;

(F) Programs to promote energy conservation in industry and commerce;

(G) Encouragement of the use and development within the state of solar, geothermal and other renewable energy resources;

(H) Development of energy management systems; and

(I) Development of material recycling, handling and management systems.

History.

Acts 1983, ch. 429, § 7; 2016, ch. 743, §§ 4, 11; T.C.A. § 4-3-710.

Former § 4-3-710 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

4-3-513. Office of energy programs — Set-aside program for petroleum products.

(a)(1) The commissioner of environment and conservation, with the assistance of the office of energy programs shall develop an emergency liquid fuel allocation program to be implemented by the governor in event of an energy emergency as defined in § 58-2-101.

(2) The setting aside of petroleum products will be in order to help meet emergency petroleum requirements, thereby relieving the hardship caused by such shortage to entities including, but not limited to, the following:

(A) Certain governmental entities providing emergency services;

(B) Other entities defined by rules as promulgated by the commissioner;

(C) Energy producers;

(D) Telecommunications services;

(E) Public transit;

(F) Users engaged in agricultural production, planting and harvesting; and

(G) Sanitation services.

(3) The commissioner shall promulgate rules, including emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, to govern the administration of the set-aside program, including, but not limited to, the form, procedures, criteria and priority for set-aside allocation and distribution.

(4) The state set-aside program for petroleum products shall be operated to the extent that it does not preempt federal law.

(5) The state set-aside program shall terminate upon the issuance of an

executive order stating that a shortage of petroleum products no longer exists.

(b) The office of energy programs shall assist with contingency plans, in coordination with power distributors in this state, to conserve electrical energy during emergency conditions. Such plans shall include the designation of priority users of electrical power.

History.
Acts 1983, ch. 429, § 7; 2016, ch. 743, §§ 5-7, 11; T.C.A. § 4-3-711.

Code Commission Notes. Former subsection (b), concerning the continued force and effect of rules promulgated and the program developed by the Tennessee energy authority, was deleted as obsolete by the code commission in 1991.

Compiler's Notes.
Former § 4-3-711 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

4-3-514. Office of energy programs — Additional powers — Confidentiality.

(a) In furtherance of its duties under §§ 4-3-510–4-3-513 the office of energy programs has the power to:

(1) Collect energy-related information for the purpose of maintaining a current source of relevant data, and for supplying the office of energy programs, as well as other federal and state agencies and the general public, with the necessary information to enable them to make informed evaluations and decisions about energy-related problems;

(2) Perform such studies, analyses or surveys as it deems necessary to carry out the intent and purposes of this chapter. The office of energy programs shall first of all be concerned with providing any studies or analyses of energy information that the governor or appropriate committees of the general assembly shall request. In addition, within limitations of funds, time and staff capacities, the office of energy programs may provide such information for the general public, individual members of the general assembly, and other state and federal authorities;

(3)(A) Maintain current reports on the supply, demand and price of the various energy resources, which shall include, but are not limited to:

(i) Coal;
(ii) Electricity;
(iii) Geothermal;
(iv) Natural gas;
(v) Nuclear power;
(vi) Petroleum; and
(vii) Solar power;

(B) In maintaining such reports, the office of energy programs shall utilize data available from other state and federal sources to the extent possible to avoid duplication of requests;

(4) Monitor and analyze technological developments in the fields of energy resource exploration, extraction, utilization, production, distribution, conservation and end-product reuse;

(5) Provide an analysis of the availability of various energy resources as well as a forecast of the future demand and availability of those resources,

where feasible;

(6) Establish an information distribution system to convey energy-related information to the general public and other interested persons;

(7) Obtain information on and monitor energy-related developments, including the following:

(A) Energy legislation pending before the United States congress;

(B) Proposed energy-related rules and regulations of federal agencies;

(C) Research development and demonstration activities affecting Tennessee;

(D) Federal grants for which citizens or government might apply;

(E) Energy proceedings and hearings of the various energy regulatory agencies;

(F) Energy-related activities and legislation in other states; and

(G) Such other energy-related activities as the head of the office of energy programs may assign;

(8) Coordinate the responses of other state agencies over and above the responses required under office of management and budget circular A-95, to federal energy programs and projects and present those agencies' views to the extent feasible; and

(9) Evaluate the practical, economic and financial feasibility of projects or facilities included under § 4-3-511(3).

(b)(1) The office shall maintain the confidentiality of all proprietary information it may acquire.

(2) "Proprietary information" is defined as trade secrets and commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the office under this chapter, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

History.
Acts 1983, ch. 429, § 7; 2016, ch. 743, §§ 8, 9, 11; T.C.A. § 4-3-712.

Compiler's Notes.
Former § 4-3-712 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-3-515. Office of energy programs — Expenditure of funds.

Any federal funds expended pursuant to §§ 4-3-510 – 4-3-514 shall only be obligated or expended in accordance with the program, terms, conditions and agreement under which such funds were received, unless specific authority to modify such program, terms, conditions or agreement has been received in writing from the granting authority.

History.
Acts 1983, ch. 429, § 27; 2016, ch. 743, §§ 10, 11; T.C.A. § 4-3-713.

Compiler's Notes.
Former § 4-3-713 was transferred to this section by Acts 2016, ch. 743, § 11, effective April 7, 2016.

PART 6

DEPARTMENT OF CORRECTION

4-3-601. Creation.

There is hereby created the department of correction.

History.

Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; 1955, ch. 102, § 1; modified.

Compiler's Notes.

The department of correction, created by this section and § 4-3-101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Acts 2015, ch. 63, § 3 provided that the department of correction shall appear before the government operations joint evaluation committee on judiciary and government no later than October 1, 2015, to update the committee on the department's progress in addressing the findings set forth in the September 2014 performance audit report.

Acts 2020, ch. 639, § 3 provided that the division of state audit within the office of the comptroller of the treasury shall submit a request for information to the department of correction regarding the department's progress in addressing the findings contained in the January 2020 performance audit report. The information received from the department is to be compiled by the division of state audit and submitted to the government operations joint evaluation committee on judiciary and government for review. The department shall appear before the joint evaluation committee no later than December 31, 2021, to update the committee on its progress in addressing the findings contained in the performance audit report as contained in the department's response to the information submitted to it by the division of state audit in accordance with this section.

Cross-References.

Creation of the department of correction, § 4-3-101.

4-3-602. Commissioner — Appointment — Qualifications — Salary — Expenses — Secretary and other employees.

(a) The department of correction is under the charge and general supervision of the commissioner of correction.

(b) It is the duty of the governor to appoint a suitable person to the position of commissioner of correction, who shall serve for a term coeval with that of the governor, or until the commissioner's successor is appointed and qualified. In the case of a vacancy in the office, it is the duty of the governor to appoint a suitable person to fill the office for the unexpired term. In order to be qualified for the office, a person shall be not less than twenty-five (25) years of age, a person of good character, and a person with training and experience in institutional operation and management in similar activities. The commissioner, upon the commissioner's appointment, shall take the oath required by law of other state officers.

(c) The commissioner shall receive as compensation for the commissioner's services a salary to be fixed by the governor as provided in § 8-23-101, payable monthly upon warrant of the commissioner of finance and administration, and also the commissioner's traveling expenses incurred in official business, when itemized and approved by the governor.

(d) The commissioner shall be provided with a suitable office, and with such furniture, supplies, books and appliances as may be necessary, the expense thereof to be audited and paid like other state expenses.

(e) The commissioner is authorized to appoint:

(1) A secretary and stenographer for the department, who shall have charge of and keep a record of the transactions of the department and all

books and accounts, and perform such other duties as may be assigned to the secretary and stenographer by the commissioner, and shall receive a salary payable monthly upon warrant of the commissioner of finance and administration; and

(2) Such other employees as may be necessary to enable the department to efficiently discharge its duties.

History.
Acts 1919, ch. 39, §§ 3, 4, 7; 1921, ch. 1, § 1; 1923, ch. 7, §§ 2, 58; impl. am. Acts 1923, ch. 7, §§ 1, 5, 42; Shan. Supp., §§ 312b3-312b6, 312b9, 373a32; Code 1932, §§ 257, 372-375, 378; Acts 1937, ch. 33, §§ 2, 24; 1939, ch. 11, § 2; 1939, ch. 178, § 1; impl. am. Acts 1949, ch. 38, § 1; C. Supp. 1950, §§ 373, 374, 378; impl. am. Acts 1955, ch. 102, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1965, ch. 252, § 1; Acts 1979, ch. 32, § 1; T.C.A. (orig. ed.), §§ 4-603 — 4-605, 4-609; modified; Acts 1980, ch. 887, § 2.

Cross-References.
Oaths of office, §§ 8-18-107 -- 8-18-114.

4-3-603. Duties of commissioner.

(a) The commissioner is the executive officer of the department of correction and has the immediate charge of the management and government of the institutions of the department, and the commissioner shall devote the commissioner's entire time and attention to the duties of the commissioner's position.

(b) In addition to any other duties provided by law, when it appears to the commissioner, in the commissioner's sole discretion, that the available facilities and institutions of the department that are designed for the custody of inmates are overcrowded, the commissioner shall endeavor to alleviate such overcrowded conditions by contracting with local governmental entities, when possible, for the care, custody, and control in local jails, workhouses, penal farms or other such facilities, of inmates who have been committed to the department, or by any other means permitted by law.

History.
Acts 1919, ch. 39, § 5; impl. am. Acts 1923, ch. 7, §§ 1-3, 42; Shan. Supp., § 312b7; Code 1932, § 376; impl. am. Acts 1955, ch. 102, § 1; Acts 1979, ch. 344, § 1; T.C.A. (orig. ed.), § 4-606.

NOTES TO DECISIONS

1. Power to Confiscate.
The department of correction cannot permanently confiscate cash found in an inmate's possession in violation of prison rules unless the general assembly has specifically authorized such a forfeiture. Blackmon v. Norris, 775 S.W.2d 367, 1989 Tenn. App. LEXIS 311 (Tenn. Ct. App. 1989).

4-3-604. Investigations by commissioner.

(a) The commissioner may make such investigations as the commissioner may deem necessary to the performance of the commissioner's duties, and to that end the commissioner shall have the same power as a judge of the court of general sessions to administer oaths and to enforce the attendance and testimony of witnesses and the production of books and papers.

(b) The commissioner shall keep a record of such investigations, stating the time, place, character or subject, witnesses summoned and examined, and the commissioner's conclusions.

(c) In matters involving the conduct of an officer, a stenographic report of the

evidence shall be taken and a copy thereof with all documents introduced kept on file at the office of the department.

(d) The fees of witnesses for attendance and travel shall be the same as in the circuit court, but no officer or employee of the institution under investigation shall be entitled to such fees.

(e) Any judge of the circuit court, either in term time or in vacation, upon application of the commissioner, may compel the attendance of witnesses, the production of books or papers and the giving of testimony before the commissioner, by a judgment for contempt or otherwise, in the same manner as in cases before a circuit court.

History.
Acts 1919, ch. 39, § 25; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b48; Code 1932, § 417; impl. am. Acts 1979, ch. 68, §§ 2, 3; T.C.A. (orig. ed.), § 4-652.

4-3-605. Organization of department.

The commissioner of correction has the authority, with the approval of the governor, to organize the work of the department under such divisions as may be necessary to carry it on most efficiently and economically.

History.
Acts 1923, ch. 7, § 43; Shan. Supp., § 373a104; Code 1932, § 323; impl. am. Acts 1955, ch. 102, § 1; T.C.A. (orig. ed.), § 4-607.

Cross-References.
Reorganization of divisions, § 4-4-101.

4-3-606. Powers and duties of department.

The department of correction shall exercise all the rights, powers and duties described in chapter 6 of this title and otherwise vested by law in the department, the commissioner, and the commissioner's officers, assistants and employees.

History.
Acts 1937, ch. 33, § 58; 1939, ch. 11, § 36; C. Supp. 1950, § 255.57 (Williams, § 255.61); modified; impl. am. Acts 1955, ch. 102, § 1; T.C.A. (orig. ed.), § 4-311.

NOTES TO DECISIONS

1. Power to Confiscate.
The department of correction cannot permanently confiscate cash found in an inmate's possession in violation of prison rules unless the general assembly has specifically authorized such a forfeiture. Blackmon v. Norris, 775 S.W.2d 367, 1989 Tenn. App. LEXIS 311 (Tenn. Ct. App. 1989).

4-3-607. Record of transactions.

A record of the transactions of the department of correction shall be kept by the commissioner, or under the commissioner's direction by the secretary.

History.
Acts 1919, ch. 39, § 6; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b8; Code 1932, § 377; T.C.A. (orig. ed.), § 4-608.

4-3-608. Local jails — Approval of construction plans.

All plans for new jails shall, before the adoption of the same by the county or

city authorities, be submitted to the commissioner for suggestions and criticism.

History.
Acts 1895, ch. 193, § 2; Shan., § 2674; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Code 1932, § 4571; impl. am. Acts 1947, ch. 13, § 3; impl. am. Acts 1955, ch. 102, § 1; T.C.A. (orig. ed.), § 4-626.

4-3-609. Exercise of police powers by employees.

(a) Those employees of the department of correction as the commissioner shall designate who have been trained in the use of firearms are vested with the powers and authority of law enforcement officers, including the authority to carry weapons, and may exercise such powers and authority while performing special details and assignments in the course of their duties as authorized by the commissioner. These instances may include the search for and apprehension of escapees, transporting inmates, assisting other law enforcement agencies, and other functions while on duty and under the supervision of the department.

(b)(1) Those employees of the department of correction appointed as special agents or as director of internal affairs and who have successfully completed law enforcement training in accordance with internal standards, including firearms training and successful completion of the Tennessee bureau of investigation's basic agent training, shall be fully vested and sworn by the commissioner as full-time law enforcement officers. The department's internal standards shall include, at a minimum, forty (40) hours initial training and eight (8) hours annual in-service training in firearms qualification administered by an instructor with certification from the Tennessee Correction Academy's firearms instructor program or from a police firearms instructor training program conducted or sanctioned by the federal bureau of investigation or the National Rifle Association. These agents and director shall have full authority to investigate and enforce the laws of the state and their mission shall focus on matters relative to the department of correction as well as those matters assisting other local, state, and federal agencies. These agents and director shall be so commissioned to carry weapons in the course of their duties and as is consistent with applicable standards for law enforcement personnel.

(2) Persons employed by the department of correction as internal affairs special agents or as an internal affairs director shall have the full power to administer oaths and take oral and written statements.

(c) The commissioner shall also establish internal procedures concerning appropriate exercise of the powers and authority vested by this section.

History.
Acts 1980, ch. 485, § 1; 1985, ch. 10, § 1; 2002, ch. 525, § 1; 2009, ch. 191, § 1; 2012, ch. 603, § 1.

4-3-610. Assistance in acquiring dogs for detection of drugs.

(a) The state of Tennessee, acting though the commissioner and department of correction, is authorized to assist counties and municipalities in acquiring dogs trained to detect marijuana and other illicit substances for use in jails and workhouses for the purposes set out in § 41-1-118.

(b) Sheriffs, police chiefs and other local law enforcement officials are encouraged to utilize the dogs provided for in subsection (a).

History.
Acts 1983, ch. 120, § 3.

4-3-611. Disclosure of the death of persons in the custody of the department of correction.

The commissioner of correction shall provide a report of any death of any person in the custody of the department at a department facility within ten (10) business days of the death of such person to the state senator and representative representing such person. The legislators representing such person shall be determined by the home address of the person in the state. This section shall not apply to the deaths of persons who were not residents of Tennessee prior to being placed in the custody of the department.

History.
Acts 2005, ch. 168, § 1.

4-3-612. Contribution to funeral expenses of correctional employee killed in line of duty.

(a) This section shall be known and may be cited as the "Debra Johnson Act."

(b) The department of correction may, if the commissioner of correction deems it appropriate, contribute up to two thousand dollars ($2,000) in state funds toward the funeral and burial expenses, as defined in § 1-3-105, of any correctional employee killed in the line of duty.

History.
Acts 2020, ch. 779, § 1.

PART 7

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

4-3-701. Creation.

There is hereby created the department of economic and community development.

History.
Acts 1972, ch. 852, § 4; modified.

Compiler's Notes.
For creation of the economic cabinet council, see Executive Order No. 17 (March 2, 1988).

The department of economic and community development, created by this section and § 4-3-101, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Cross-References.
Creation of the department of economic and community development, § 4-3-101.

4-3-702. Commissioner.

(a) The department of economic and community development shall be under

the charge and general supervision of the commissioner of economic and community development.

(b) The commissioner shall be appointed by the governor.

(c) The commissioner has the authority to promulgate rules and regulations necessary for the operation of the department or to effectuate any of the programs or responsibilities of any of the divisions of the department. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 1972, ch. 852, §§ 6, 16; modified; T.C.A., § 4-302; Acts 1984, ch. 666, § 1.

Code Commission Notes. The phrase "from among nominations received by the governor from the Tennessee board for economic growth", formerly appearing at the end of (b), was deleted as obsolete by the Code Commission in 2015 since the board no longer exists.

Compiler's Notes.
The Tennessee board for economic growth, formerly referred to in this section, was repealed by Acts 2009, ch. 105, §§ 2 and 3, effective April 27, 2009.

Cross-References.
Industrial development loans, §§ 4-31-306 — 4-31-308.

4-3-703. General functions.

It is the function of the department of economic and community development to coordinate development services to communities, businesses and industries in the state.

History.
Acts 1972, ch. 852, § 5; T.C.A., § 4-343.

Cross-References.
Department to manage and supervise bonds issued by Mill Creek watershed flood control authority, § 64-3-104.

Major energy projects, coordination of regulation, title 13, ch. 18.

4-3-704. Divisions — Creation.

(a) There are created within the department of economic and community development the following divisions:

(1) The administrative and support services division; and

(2) The industrial development division.

(b) The commissioner is authorized, with the consent of the governor, to appoint directors of these divisions, to combine, consolidate, or abolish any of these divisions, or to create such new divisions as are necessary to carry out the duties imposed upon the commissioner and this department.

History.
Acts 1959, ch. 9, § 11; 1963, ch. 169, §§ 1, 3; 1972, ch. 852, § 10; 1976, ch. 468, § 7; T.C.A., § 4-343; Acts 1983, ch. 429, § 5; 2016, ch. 743, § 1.

Cross-References.
Business enterprise office created, § 4-26-101.

Office of business enterprise, duties, § 4-3-728.

Reorganization of divisions, § 4-4-101.

4-3-705. Administrative and support services division — Functions.

It is the function of the administrative and support services division to provide development services and marketing programs for the other divisions

of this department and to provide administrative and budgetary services for the entire department.

History.
Acts 1972, ch. 852, § 11; T.C.A., § 4-343.

4-3-706. Industrial development — Powers and duties.

(a) It is the function of the department of economic and community development to stimulate the creation of new jobs and income through services to business and industry.

(b) The department shall exercise all of the administrative powers, duties and functions described in §§ 4-14-103 — 4-14-107.

(c) The department has the power to make rules and regulations not inconsistent with law for the administration of its functions and duties.

(d) The department shall provide for the administration of title 68, chapter 202, part 1.

History.
Acts 1959, ch. 9, § 11; 1963, ch. 169, §§ 2, 3; 1972, ch. 852, § 12; T.C.A., §§ 4-331, 4-343; modified; Acts 1985, ch. 256, § 6.

Code Commission Notes. Former subsection (d), which provided that the former board for economic growth serve as an advisory commission to the commissioner of economic and community development, was deleted as obsolete by the Code Commission in 2015.

Compiler's Notes.
The Tennessee board for economic growth, formerly referred to in this section, was repealed by Acts 2009, ch. 105, §§ 2 and 3, effective April 27, 2009.

4-3-707. Industrial development authority — Transfer of duties.

The duties required of the Tennessee industrial development authority as of June 30, 1981, relative to the outstanding loan guarantees and commitments made by the authority, are transferred to the department of economic and community development.

History.
Acts 1981, ch. 521, §§ 2, 3.

Code Commission Notes. Former subsection (b), concerning transfer of moneys on deposit in the Tennessee industrial development authority fund on July 1, 1981, to the general fund, was deleted as obsolete by the code commission in 1991.

4-3-708. Broadband accessibility grant program.

(a) The commissioner of economic and community development is authorized to establish and administer the broadband accessibility grant program, referred to in this section as the "program," for the purpose of promoting the deployment and adoption of broadband internet access services, referred to in this section as "broadband services."

(b) The program is funded through the Tennessee broadband accessibility fund, referred to in this section as the "fund," established as a separate account in the general fund. Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the fund or transfer any part of the fund to the revenue fluctuation reserve. Moneys in the fund shall be invested

by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the fund.

(c) The fund is subject to appropriations by the general assembly and gifts, grants, and other donations received by the department of economic and community development for the program or fund.

(d) The program is administered pursuant to policies developed by the department. The policies must provide for the awarding of grants to political subdivisions or entities of political subdivisions, corporations, limited liability companies, partnerships or other business entities that provide broadband services; cooperatives organized under the Rural Electric and Community Services Cooperative Act, compiled in title 65, chapter 25, or the Telephone Cooperative Act, compiled in title 65, chapter 29; and any other entity authorized by state law to provide broadband services.

(e) Grants must be awarded to promote the deployment and adoption of broadband services with minimum download speeds of ten megabits per second (10 Mbps) and minimum upload speeds of one megabit per second (1 Mbps) to locations without broadband services at these minimum speeds. Grants must be awarded pursuant to criteria developed by the department of economic and community development, with priority given to projects that:

(1) Serve locations without access to download speeds of at least ten megabits per second (10 Mbps) and upload speeds of at least one megabit per second (1 Mbps);

(2) Propose to acquire and install infrastructure that supports broadband services scalable to higher download and upload speeds. However, this priority shall not take precedence over serving a greater number of locations or larger area;

(3) Serve locations with demonstrated community support, including, but not limited to, documented support from the political subdivision or the political subdivision receiving designation as a broadband ready community pursuant to § 4-3-709;

(4) Have not received funds or have not been designated to receive funds through other state or federally funded grant programs designed specifically to encourage broadband deployment in an area within a location without the minimum speeds as described in this subsection (e); and

(5) Will provide higher download and upload speeds of broadband service to the locations served.

(f) Notwithstanding subsection (e), the department may award a portion of grant funds to local libraries in this state for the purpose of assisting the libraries in offering digital literacy training pursuant to state library and archives guidelines.

(g) Moneys in the fund may be used by the department of economic and community development for the purpose of administering the program. However, the expenses incurred to administer the program must not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(h) For any year in which grants are distributed under the program, the department shall produce a report on the status of grants under the program, including progress toward increased access to and adoption of broadband

services. The report must be provided to the governor, speaker of the house of representatives, and speaker of the senate and published on the department's website.

History.
Acts 2017, ch. 228, § 2.

Compiler's Notes.
Former § 4-3-708 was transferred to § 4-3-510 by Acts 2016, ch. 743, § 11, effective April 7, 2016.

Acts 2017, ch. 228, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Tennessee Broadband Accessibility Act."

§ 4-10-113, enacted by Acts 2017, ch. 228, § 3, provides that the Tennessee advisory commission on intergovernmental relations is directed to study and prepare a report updating its January 2017 Report on broadband services which shall be delivered to the general assembly by January 15, 2021.

4-3-709. Designation as broadband ready community.

(a) A political subdivision may apply to the department of economic and community development for designation as a "broadband ready community" pursuant to guidelines established by the department. The guidelines for designation must include a requirement that the political subdivision has adopted an efficient and streamlined ordinance or policy for reviewing applications and issuing permits related to projects relative to broadband services. The ordinance or policy must contain the following:

(1) A single point of contact for all matters related to a project;

(2) A provision that all applications related to a project will be reviewed and either approved or denied within thirty (30) business days after the application is submitted; and

(3) An authorization that all forms, applications, and documentation related to a project may be signed by electronic means, where possible.

(b) A political subdivision shall not be designated a broadband ready community if the ordinance or policy:

(1) Requires an applicant to designate a final contractor to complete a project;

(2) Imposes an unreasonable fee for reviewing an application or issuing a permit for a project. A fee that exceeds one hundred dollars ($100) is unreasonable for the purposes of this section;

(3) Imposes a seasonal moratorium on the issuance of permits for projects; or

(4) Discriminates among communications services providers or utilities with respect to any action related to a broadband project, including granting access to public rights-of-way, infrastructure and poles, and any other physical assets owned or controlled by the political subdivision.

History.
Acts 2017, ch. 228, § 2.

Compiler's Notes.
Former § 4-3-709 was transferred to § 4-3-511 by Acts 2016, ch. 743, § 11, effective April 7, 2016.

Acts 2017, ch. 228, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Tennessee Broadband Accessibility Act."

4-3-710 — 4-3-713. [Reserved.]

4-3-714. Legislative intent — Reports.

It is the intent of the general assembly that the department of economic and community development provide periodic reports to the government operations committees of the senate and the house of representatives relative to corrective steps to address the audit findings of the office of the comptroller.

History.
Acts 2006, ch. 936, § 3.

Compiler's Notes.
Former § 4-3-714 (Acts 1983, ch. 429, § 11; 1988, ch. 654, § 1), concerning the energy advisory board, was repealed by Acts 2000, ch. 561, § 1, effective July 1, 2000. Acts 2000, ch. 561, § 2 provided that notwithstanding § 4-29-112, or any other law to the contrary, the energy advisory board, created by this section, terminated and ceased all activities on July 1, 2000.

4-3-715. Short title — Purpose.

Sections 4-3-715 — 4-3-717 shall be known and may be cited as "The Tennessee Job Growth Act of 2005" and are enacted for the purpose of establishing the FastTrack infrastructure development and job training assistance and economic development programs within the department of economic and community development to assist new and existing business and industry that locate or expand in this state and create or retain jobs.

History.
Acts 2005, ch. 233, § 2; 2012, ch. 1038, § 1.

Compiler's Notes.
Acts 2005, ch. 233, § 5 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

4-3-716. FastTrack infrastructure development and job training assistance and economic development fund — Funding — Uses of fund — Legislative intent.

(a) The FastTrack infrastructure development and job training assistance and economic development fund, referred to as the "FastTrack fund" in this section and in § 4-3-717, is established as a separate account in the general fund.

(b) The FastTrack fund is composed of:

(1) Funds appropriated by the general assembly for the FastTrack fund; and

(2) Gifts, grants and other donations received by the department of economic and community development for the FastTrack fund.

(c) Money in the FastTrack fund may be used by the department of economic and community development for program administration, marketing expenses and program evaluation; however, such expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(d) Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the FastTrack fund or transfer any part of the fund to the revenue fluctuation reserve.

(e) Moneys in the FastTrack fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the FastTrack fund,

and interest accruing on investments and deposits of such fund shall be returned to such fund and remain part of the FastTrack fund.

(f) It is the intent of the general assembly that, to the extent practicable, money from the FastTrack fund shall be spent in all areas of the state.

(g) It is the legislative intent that new commitments made by the commissioner of economic and community development for grants from the FastTrack fund shall not exceed the appropriations made for the purposes of the FastTrack infrastructure development, job training assistance and economic development programs. The commissioner of economic and community development is authorized, subject to the concurrence of the state funding board, to determine the amount of new commitments unlikely to be accepted based on historical program trends and may over-commit to the extent of such determination. In no event may such over-commitments exceed thirty percent (30%) of the appropriations available for new grants. It is further the legislative intent that in each fiscal year the FastTrack programs be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year shall not exceed any available reserves and appropriations of the programs.

(h) No less frequently than quarterly, the commissioner of economic and community development shall report to the commissioner of finance and administration the status of the appropriations for the FastTrack fund, such report to include at least the following information: the amount of each commitment accepted since the previous report and the name of the company receiving the benefit of such commitment, the total outstanding commitments and the total unobligated appropriation. A copy of each such report shall be transmitted to the speaker of the house of representatives and the speaker of the senate, the state treasurer, the state comptroller, the office of legislative budget analysis, and the secretary of state.

History.
Acts 2005, ch. 233, § 3; 2010, ch. 1030, § 2; 2012, ch. 1038, §§ 2-5; 2016, ch. 797, § 2.

Compiler's Notes.
Acts 2005, ch. 233, § 5 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

4-3-717. Grants and loans.

(a) FastTrack infrastructure development, training, and economic development grants from the FastTrack fund shall be made only where there is a commitment by a responsible official in an eligible business for the creation or retention of private sector jobs and private investment, or where the commissioner of economic and community development determines that such investment will have a direct impact on employment and investment opportunities in the future.

(b)(1) FastTrack industrial infrastructure and industrial site preparation grants or loans to assist eligible businesses may be made only to local governments or to their economic development organizations or other political subdivisions of the state.

(2) Infrastructure grants may not be applied to private land or to land that is expected to become privately owned.

(3) Land owned by a political subdivision of the state shall not be

considered private land and any such land that is subject to a purchase option by a private entity shall not be considered to be land that is expected to become privately owned so long as the purchase option covering the land may not be exercised for a period of at least five (5) years following the date of an infrastructure grant pursuant to this section.

(c) FastTrack industrial training grants from the FastTrack fund shall be awarded only to eligible businesses for industrial training under the following conditions:

(1) To support the training of new employees for locating or expanding industries; and

(2) To support the retraining of existing employees where retraining is required by the installation of new machinery or production processes.

(d)(1) FastTrack economic development grants or loans to assist eligible businesses may be made only to local governments or to their economic development organizations or other political subdivisions of the state. FastTrack economic development grants or loans may be used to facilitate economic development activities that are not eligible for FastTrack infrastructure development or job training assistance funds. These activities include, but are not limited to, grants or loans for retrofitting, relocating equipment, purchasing equipment, building repairs and improvements, temporary office space or other temporary equipment related to relocation or expansion. It is the intent of the general assembly that these economic development funds be used in exceptional circumstances when the funds will make a proportionally significant economic impact on the affected community.

(2) The department of economic and community development shall notify and provide to the state funding board a detailed written explanation of the purpose for which a FastTrack economic development grant or loan is being awarded or used when FastTrack economic development grants or loans are awarded or used for activities that are not eligible for FastTrack infrastructure development or job training assistance funds.

(3) The state funding board shall maintain as confidential any records or information obtained in accordance with subdivision (d)(2) that is otherwise confidential pursuant to state law.

(e) The total amount of FastTrack grants or loans made pursuant to these programs shall not exceed seven hundred fifty thousand dollars ($750,000) per eligible business within any three-year period beginning July 1, 2005, unless approved by the state funding board. The state funding board is authorized to establish, by policy or action, the process by which the commissioner of economic and community development shall seek and receive approval for such grants and loans to exceed the dollar limitation.

(f) In determining the level of grant assistance for infrastructure and site preparation consideration shall be given to local ability-to-pay with areas of lesser ability being eligible for higher grant rates.

(g) Notwithstanding any other law to the contrary, the department shall post the following information on its website at least quarterly:

(1) The name of the company or entity receiving FastTrack funds;

(2) The amount of the FastTrack funds received;

(3) The number of jobs to be created by a project funded by FastTrack funds; and

(4) The location of a project funded by FastTrack funds.

(h) As used in §§ 4-3-715, 4-3-716 and this section, unless the context otherwise requires:

(1) "Eligible business" means:

(A) Manufacturing and other types of economic activities which export more than half of their products or services outside of Tennessee;

(B) Businesses where more than half of the business' products or services enter into the production of exported products;

(C) Businesses where the uses of the business' products primarily result in import substitution on the replacement of imported products or services with those produced in the state; or

(D) Other types of economic activity, including, but not limited to, research funding, technology projects and other projects that contribute significantly to community development education as determined by the commissioner of economic and community development to have a beneficial impact on the economy of the state; and

(2) "Industrial infrastructure" includes, but is not limited to, water, wastewater, or transportation systems, line extensions or industrial site preparation where it is demonstrated that such infrastructure improvements are necessary for the location or expansion of business or industry. Industrial infrastructure also means significant technological improvements, including, but not limited to, digital switches, fiber optic cabling or other technological improvements determined by the commissioner of economic and community development to have a beneficial impact on the economy of this state.

History.

Acts 2005, ch. 233, § 4; 2012, ch. 1038, §§ 6-8; 2013, ch. 71, § 1.

Compiler's Notes.

Acts 2005, ch. 233, § 5 provided that no expenditure of public funds pursuant to the act shall be made inviolation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-3-718. Propelling rural economic progress (P.R.E.P.) fund.

(a) The propelling rural economic progress fund, referred to as the "P.R.E.P. fund" in this part, is established as a separate account in the general fund.

(b) The P.R.E.P. fund shall be composed of:

(1) Funds appropriated by the general assembly for the P.R.E.P. fund; and

(2) Gifts, grants, and other donations received by the department of economic and community development for the P.R.E.P. fund.

(c) Moneys in the P.R.E.P. fund may be used by the department of economic and community development for program administration, marketing expenses, and program evaluation; provided, however, such expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(d) Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any

amounts remaining in the P.R.E.P. fund or transfer any part of the fund to the revenue fluctuation reserve.

(e) Moneys in the P.R.E.P. fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the P.R.E.P. fund, and interest accruing on investments and deposits of the P.R.E.P. fund shall be returned to and remain part of the P.R.E.P. fund.

(f) To the extent practicable, moneys from the P.R.E.P. fund shall be spent in all three (3) grand divisions of the state.

(g) New commitments made by the commissioner of economic and community development for grants from the P.R.E.P. fund shall not exceed the appropriations made for the purposes of the program. In each fiscal year, the P.R.E.P. fund shall be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year shall not exceed any available reserves and appropriations of the programs.

(h) At least quarterly, the commissioner of economic and community development shall report to the commissioner of finance and administration the status of the commitments from the P.R.E.P. fund. The report shall include at least the following information: the amount of each commitment accepted since the previous report; the applicant receiving the benefit of each commitment; the total outstanding commitments; and the total unobligated balance. A copy of the report shall be transmitted to the speaker of the house of representatives and the speaker of the senate, the chairs of the finance, ways and means committees, the state treasurer, the state comptroller, the office of legislative budget analysis, and the secretary of state.

History.
Acts 2016, ch. 1019, § 2.

Compiler's Notes.
Acts 2016, ch. 1019, § 1 provided that the act shall be known and may be cited as the "Rural Economic Opportunity Act of 2016".

4-3-719. Grants from the P.R.E.P. fund.

(a) Grants from the P.R.E.P. fund created in § 4-3-718 may be made in all counties where the commissioner of economic and community development determines that the grants will have a direct impact on employment and investment opportunities in the future.

(b) Grants from the P.R.E.P. fund may be made only to local governments or their economic development organizations, other political subdivisions of the state, any subdivision of state government, or to not-for-profit organizations.

(c) Grants from the P.R.E.P. fund may be used to facilitate economic development activities in rural areas or in a manner that directly impacts rural areas. These activities include: site development activities; infrastructure activities; tourism-related activities; planning activities; training and mentoring activities; entrepreneurship activities; significant technological improvements; or other economic development activities determined by the commissioner of economic and community development to have a beneficial impact on the economy of this state.

(d) Notwithstanding any other law to the contrary, the department shall post the following information on its website at least quarterly:

(1) The name of each P.R.E.P. fund grant recipient;
(2) The amount of each P.R.E.P. fund grant; and
(3) A description of the project to be funded by each P.R.E.P. fund grant.

History.
Acts 2016, ch. 1019, § 3.

Compiler's Notes.
Acts 2016, ch. 1019, § 1 provided that the act shall be known and may be cited as the "Rural Economic Opportunity Act of 2016".

4-3-720. Short title — Purpose — Contributions made by governmental entity pursuant to master development plan.

(a) This section shall be known, and may be cited as, the "Master Development Plan Recognition Act."

(b) The purpose of this section is to define those actions taken by a governmental entity that constitute contributions made by the governmental entity pursuant to a master development plan approved by the governmental entity for purposes of Section 118 of the Internal Revenue Code of 1986 (26 U.S.C. § 118), as amended by Pub. L. No. 115-97, § 13312.

(c) Contributions made by a governmental entity pursuant to a master development plan approved by the governmental entity within the meaning of Section 118 of the Internal Revenue Code of 1986 (26 U.S.C. § 118), as amended by Pub. L. No. 115-97, § 13312, include, but are not limited to, the following:

(1) Grants approved by the commissioner of economic and community development, including grants authorized or otherwise referenced in this part, regardless of whether the grants are also approved by any other agency, board, or other office of state government, and regardless when the funding in connection with the grant is authorized or paid, or both;

(2) Grants approved by an authorized representative of any county or municipality within the state of Tennessee or any agency of, or entity created by, the county or municipality, whether the funding for the grants originates in whole or in part with the state of Tennessee or with the county or municipality, including, but not limited to, grants that are authorized by, or referenced in, this part, and regardless of when the funding in connection with the grant is authorized or paid, or both;

(3) Tax increment financing applications for which a letter, or final, preliminary, or conditional approval, has been issued by an appropriate representative of state, county, or municipal government, and regardless of when the funding in connection with the tax increment financing application is authorized or paid, or both; and

(4) Any other development plan, redevelopment plan, revitalization plan, or similar plan approved by an appropriate representative of state, county, or municipal government, and regardless of when the funding in connection with the plan is authorized or paid, or both.

History.
Acts 2018, ch. 852, § 1.

Compiler's Notes.
Acts 2018, ch. 852, § 2 provided that the act, which enacted this section, shall apply to contributions made by a governmental entity on or after December 22, 2017, which is the date of enactment of Pub. L. No. 115-97, § 13312.

4-3-721. Report relating to disaster resilience.

The commissioner of economic and community development is directed to report to the local government committee of the house of representatives and the state and local government committee of the senate each year on or before January 15 concerning the department of economic and community development's financial and program monitoring of the use of federal community development block grant funding to counties and municipalities from the United States department of housing and community development for disaster resilience purposes. The reports to the legislative committees shall continue annually until the commissioner certifies that no funds remain to be expended for disaster resilience from the federal community development block grant funding.

History.
Acts 2018, ch. 947, § 1.

4-3-722. [Expired.]

Compiler's Notes.
Former § 4-3-722, (Acts 2018, ch. 1055, § 1) expired by its own terms on July 1, 2021.

4-3-723 — 4-3-726. [Reserved.]

4-3-727. Local government planning advisory committee.

(a) There is created a local government planning advisory committee composed of seven (7) officers of local governments to be appointed by the governor for a term of four (4) years; provided, that four (4) of the members shall be appointed for an initial term of four (4) years and three (3) for an initial term of two (2) years.

(b) Membership on the committee shall terminate upon:

(1) Separation of any member from local government office; or

(2) The failure of any member to attend three (3) consecutive meetings of the committee.

(c) The governor shall fill vacancies for any unexpired term.

(d) No member shall serve for more than one (1) consecutive term.

(e) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. All members of the committee shall serve as such without compensation, but they shall be allotted necessary traveling and other appropriate expenses while engaged in the work of or for the committee.

(f) The committee has the duty to exercise the powers over regional planning commissions provided for in §§ 13-3-101 and 13-3-102.

(g) The committee shall adopt and implement a conflict of interest policy for committee members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by committee members that they have read and understand all aspects of the policy. The policy shall also require persons who are to be appointed to

the committee to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

History.
Acts 1972, ch. 542, § 7; 1976, ch. 806, § 1(51); T.C.A., § 13-102; T.C.A., § 13-1-102; Acts 1983, ch. 442, § 2; 1985, ch. 104, § 1; 1988, ch. 548, § 3; 2011, ch. 509, § 3; 2013, ch. 252, § 5.

Compiler's Notes.
The local government planning advisory committee, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

4-3-728. Community development block grants to disadvantaged businesses.

(a) Notwithstanding any law to the contrary, in the allocation and use of community development block grants it is the policy of this state that a substantial portion of such grants shall be utilized whenever reasonably possible for the development of contracts with disadvantaged businesses as defined in § 4-26-102.

(b) The office of business enterprise in the department of economic and community development shall advise the commissioner, or any other official with authority to allocate or disperse community block grants, of disadvantaged businesses that should be considered as recipients of such block grants.

(c) The office of business enterprise shall annually report not later than December 1, to the general assembly, of all such advisements regarding disadvantaged businesses and the number of or amount of community block grants received by disadvantaged businesses.

History.
Acts 1984, ch. 873, § 1.

4-3-729. [Reserved.]

4-3-730. Records open to public inspection — Exceptions.

(a) The department of economic and community development adopts as its official policy the principle of open records and, unless otherwise provided by this section, the information and documents maintained, received or produced by such department shall be open for inspection by the public.

(b) Any binding contract or agreement entered into or signed by the department that obligates public funds shall, together with all supporting records and documentation, be considered a public record and open for public inspection as of the date such contract or agreement is entered into or signed.

(c)(1) Notwithstanding any other law to the contrary, any record, documentary materials, or other information, including proprietary information, received, produced or maintained by the department shall be considered public unless the commissioner, with the affirmative agreement of the attorney general and reporter, determines that a document or information is of such a sensitive nature that its disclosure or release would seriously harm the ability of this state to compete or conclude agreements or contracts for economic or community development.

(2) If the commissioner, with the agreement of the attorney general and reporter, determines pursuant to subdivision (c)(1) that a document or

information should not be released or disclosed because of its sensitive nature, such document or information shall be considered confidential for a period of up to five (5) years from the date such a determination is made. After such period, the document or information made confidential by this subsection (c) shall become a public record and shall be open for inspection.

(d) This section shall not apply to trade secrets received, maintained or produced by the department. All such trade secrets shall remain confidential.

(e) As used in this section, unless the context otherwise requires:

(1) "Proprietary information" means commercial or financial information that is used either directly or indirectly in the business of any person or company submitting information to the department, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(2) "Trade secrets" means manufacturing processes, materials used in manufacturing processes, and costs associated with the manufacturing process of a person or company submitting information to the department.

(f)(1) This section shall not apply to company documents or records containing marketing information or capital plans that are provided to the department with the understanding that they are now and should remain confidential. Any such document or record shall remain confidential until such time as the provider thereof no longer requires its confidentiality.

(2) As used in subdivision (f)(1), unless the context otherwise requires:

(A) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments; and

(B) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships.

History.
Acts 1988, ch. 894, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-3-731. Execution of a separate agreement when grant or loan contract reserves right of recovery if person or entity fails to fulfill commitments — Execution of separate agreement in conjunction with capital grant contract — Reports.

(a) Notwithstanding any law to the contrary, the department of economic and community development shall execute a separate agreement in conjunction with any grant or loan contract awarded pursuant to § 4-3-717(d)(1) that reserves the right of the department to recover the amount of money, grants, funds, or other incentives disbursed by the department, in whole or in part, if the person or entity benefitting from such money, grants, funds, or other incentives fails to fulfill the commitments made by such person or entity to the department.

(b) For any grant or loan contract awarded pursuant to § 4-3-717(d)(1) on or after July 1, 2014, the department shall publish all baseline reports or annual reports filed with the department pursuant to this section on its website within ninety (90) days of receipt. For any grant or loan contract awarded pursuant to

§ 4-3-717(d)(1) between May 27, 2005, and January 1, 2011, the recipient shall be required to file a one-time report by February 1, 2015. The department shall provide a form for the reports that shall request, at a minimum:

(1) The name of the development authority which administers the grant;

(2) The name of the eligible business;

(3) For baseline reports, the number of existing employees of the eligible business;

(4) For annual reports, the number of net new jobs for the reporting period, as well as the number of cumulative net new jobs of the eligible business, and the total amount of the grant; and

(5) Any other information that may be required by the department.

(c) As used in this section:

(1) "Annual report" means a report which is delivered to the department by an eligible business after execution of a grant or loan contract awarded pursuant to § 4-3-717(d)(1) on an annual basis which details the number of net new jobs for the reporting period as well as the number of cumulative net new jobs; and

(2) "Baseline report" means a report which is delivered to the department by an eligible business upon execution of a grant or loan contract awarded pursuant to § 4-3-717(d)(1) which details the number of existing employees of an eligible business.

(d) Notwithstanding any law to the contrary, the department shall execute a separate agreement in conjunction with any capital grant contract awarded pursuant to chapter 15 of this title, for economic development purposes. The separate agreement must reserve the right of the department to recover the amount of grants, funds, or other incentives disbursed by the department of finance and administration pursuant to the grant contract, in whole or in part, if the person or entity benefitting from the grants, funds, or other incentives fails to fulfill the commitments made by the person or entity to the department of economic and community development.

(e)(1) At least once each year, the department shall report to the fiscal review committee on any new clawback rights being executed by the department during the current year, as well as any clawback rights from previous years that are still being collected by the department during the current year.

(2) As used in this subsection (e), "clawback" means a provision in an agreement or a separate agreement that reserves the right of the department to recover the amount of money, grants, funds, or other incentives disbursed by the department, in whole or in part, if the person or entity benefitting from such money, grants, funds, or other incentives fails to fulfill the commitments made by such person or entity to the department.

History.

Acts 2013, ch. 267, § 1; 2014, ch. 924, § 1; 2019, ch. 451, § 1; 2020, ch. 772, § 1.

Compiler's Notes.

Acts 2013, ch. 267, § 2 provided that the act, which enacted this section, shall apply to all contracts entered into or renewed on or after July 1, 2013.

Acts 2014, ch. 924, § 2 provided that the act, which added subsections (b) and (c), shall apply to all grants awarded on or after July 1, 2014.

Acts 2019, ch. 451, § 4 provided that subsection (d) of this section shall apply to applicable capital grant contracts for economic development purposes executed on or after July 1, 2019.

4-3-732. Enhanced policymaking role for minority business.

Notwithstanding any law to the contrary, the director of the office of business enterprise, created by § 4-26-101, may, in the discretion of the commissioner, serve as a full, voting member of each committee, board, task force, group or other entity that is formally or informally attached to or established within the department for the purpose of formulating, adopting or recommending state policies to enhance economic and community development. The general assembly urges the department of economic and community development to develop an enhanced policymaking role for minority business.

History.
Acts 1996, ch. 976, § 1.

Cross-References.
Enhanced policymaking role for minority business, § 4-3-2305.

4-3-733. Historically black college or university consortium or technology partnership — Memorandum of cooperation.

(a) The department of economic and community development is authorized and directed to provide all necessary and appropriate administrative assistance, support, and guidance to facilitate strategy development and coordinated implementation by the Tennessee HBCU consortium and the Tennessee HBCU technology partnership to accomplish their respective and mutual key objectives.

(b) In furtherance of subsection (a), the department may enter into one (1) or more memoranda of cooperation with the consortium and the partnership on such terms as are deemed by the commissioner to be appropriate, mutually beneficial, and in the best interest of the consortium and the partnership.

History.
Acts 2003, ch. 324, § 2.

4-3-734. Minimum energy conservation standards — New residential building construction.

(a) Notwithstanding title 13, chapter 19 to the contrary, the minimum energy conservation standards for any new residential building construction on or after January 1, 2009, shall be the 2003 International Energy Conservation Code published by the International Code Council. Builders of new residential and commercial construction are encouraged to voluntarily utilize the 2006 International Energy Conservation Code energy conservation standards for new residential or commercial construction.

(b) The department is requested to provide information to the public concerning the 2003 and 2006 International Energy Conservation Codes on its website.

(c) This section shall not be construed as mandating any higher level of enforcement or inspection by local governments than that in place prior to January 1, 2009.

History.
Acts 2008, ch. 907, § 1.

4-3-735. Energy efficiency and environmental building standards.

Energy efficiency and environmental building standards adopted by the state or by local jurisdictions:

(1) May include the use of a sheathing with factory applied radiant barrier with an emissivity rating of five one hundredths (0.05) or less or a sheet radiant barrier with an emissivity rating of five one hundredths (0.05) or less that also meets the specifications of ASTM C1313 and is installed according to ASTM C1158; and

(2) May include the use of lumber and engineered wood products that originate from sustainable sources and are certified through the:

(A) SFI (Sustainable Forestry Initiative);

(B) CSA (Canadian Standards Association);

(C) ATFS (American Tree Farms System);

(D) PEFC (Programme for the Endorsement of Forest Certification) endorsed schemes; and

(E) FSC (Forest Stewardship Council).

History.
Acts 2008, ch. 907, § 2.

4-3-736. Authority of department of economic development to allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among counties and large municipalities.

The state delegates to the department of economic and community development the authority to allocate on behalf of the state the portions of the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation, as the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation are defined in § 1400U-1 of the Internal Revenue Code of 1986 (26 U.S.C. § 1400U-1), that are allocated to the state pursuant to § 1400U-1(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. § 1400U-1(a)(1)), among the counties and large municipalities, as defined in § 1400U-1(a)(3)(B) of the Internal Revenue Code of 1986 (26 U.S.C. § 1400U-1(a)(3)(B)), in the manner provided in § 1400U-1(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 1400U-1(a)(3)).

History.
Acts 2009, ch. 608, § 1.

Compiler's Notes.
26 U.S.C. 1400U, referred to in this section, was repealed by March 23, 2018, P.L. 115-141, Div U, Title IV, § 401(d)(6)(A), 132 Stat. 1211, subject to savings provisions, as provided by Sec. 401(d)(6)(C) of P.L. 115-141, which appears as a note to Code Sec. 1400L. It provided for allocation of recovery zone bonds.

4-3-737. Small business incentive.

(a)(1) As an incentive to encourage the creation of more small businesses in this state by making access to essential information necessary to begin a

business user friendly, the department of economic and community development, in consultation with the office of small business advocate, created within the office of the comptroller of the treasury pursuant to § 8-4-702, shall develop a web page to aid the user in obtaining information concerning state laws, regulations and requirements that apply to the specific type of small business the user desires to form. The web page shall have its own domain name with a URL that indicates it is related to small businesses. The web page shall also contain hyperlinks to such laws, regulations and requirements. The hyperlinks shall include, but not be limited to:

(A) Forms or documents which a state department or agency requires to be filed for that type of business to operate in Tennessee;

(B) Contact information and websites for boards and commissions which regulate the specific type of entity to be formed; and

(C) Notices regarding potential and pending rule making hearings for the various boards and commissions.

(2) The web page shall also provide notice to the user of the importance of checking with the local government where the business is to be located to ensure compliance with local zoning and code requirements and may provide a hyperlink to the county or municipality's web page, if one is maintained by the county or municipality.

(b) All departments and agencies with regulatory authority over business shall provide assistance in the compilation of this information.

(c) The department of economic and community development shall monitor the web page to ensure the accuracy of its information and to update it as necessary.

(d) The office of small business advocate shall report the status of the project no later than February 15, 2013, to the commerce and labor committee of the senate and the commerce committee of the house of representatives.

History.
Acts 2012, ch. 810, § 1; 2013, ch. 236, § 12; 2019, ch. 345, § 6.

Compiler's Notes.
Acts 2012, ch. 810, §§ 2 and 3 provided that the act, which enacted this section, shall be known and may be cited as the "Small Business Incentive Act."

4-3-738. Made in Tennessee Act — Encourage producers and promotion of Tennessee products.

(a) This section shall be known and may be cited as the "Made in Tennessee Act."

(b) The purpose of this section is to encourage producers and promotion of nonagricultural products made in this state.

(c) The University of Tennessee Center for Industrial Services may:

(1) Use a logo or seal for "Made in Tennessee" products and goods, except for food and agricultural products, that have been substantially processed, fabricated, manufactured or otherwise transformed in this state; and

(2) Take appropriate steps to protect the logo or seal from misuse or infringement as deemed necessary by the center.

(d) Prior to use of the logo or seal, a producer or retailer shall register with the center and comply with all terms, conditions and requirements for use of

the logo or seal as determined by the center. A list of all producers and retailers registered with the center may be made available on the center's website.

(e) The center may deny, suspend or revoke a producer or retailer's registration and the ability to use the logo or seal if the producer or retailer fails to comply with the terms, conditions and requirements promulgated by the center.

(f) The department may provide technical assistance to the center upon request.

(g) The center may seek any available grants and other sources of funding to implement and administer this section.

(h) By February 1 of each year, the center shall report on promotion of nonagricultural products made in this state through use of a logo or seal pursuant to this section to the commerce and labor committee of the senate and the commerce committee of the house of representatives.

(i) As used in this section, unless the context requires otherwise:

(1) "Agricultural products" means horticultural, poultry, dairy and farm products, livestock and livestock products, harvested trees, nursery stock and nursery products;

(2) "Center" means the University of Tennessee Center for Industrial Services;

(3) "Department" means the department of economic and community development;

(4) "Producer" means any individual or legal entity engaged in the processing, fabrication, manufacture or other transformation of goods or products, other than food and agricultural products, in this state; and

(5) "Retailer" means any individual or legal entity engaged in the business of making sales of a producer's goods or products to the public.

History.
Acts 2013, ch. 299, § 1; 2015, ch. 131, §§ 1-3; 2019, ch. 345, § 7.

PART 8

DEPARTMENT OF EDUCATION

4-3-801. Creation.

There is hereby created the department of education.

History.
Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; C. Supp. 1950, § 255.1; modified.

Compiler's Notes.
The department of education, created by § 4-3-101 and this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Acts 2015, ch. 129, § 3 provides that the Department of Education shall appear before the Government Operations Joint Evaluation Committee on Education, Health and General Welfare no later than December 1, 2015, to update the Committee on the Department's progress in addressing the findings set forth in the November 2014 performance audit report.

Acts 2019, ch. 336, § 3 provides that the department of education shall appear before the government operations joint evaluation committee on education, health and general welfare no later than March 15, 2019, to update the committee on the department's progress in

addressing the findings set forth in the December 2018 performance audit report.

Cross-References.

Creation of the department of education, § 4-3-101.

Department of education representatives as ex officio members of child sexual abuse task force, § 37-1-603.

4-3-802. Commissioner — Qualifications — Appointment.

(a) The chief executive officer of the department of education shall be the commissioner of education.

(b) The commissioner shall be a person of literary and scientific attainments and of skill and experience in school administration. The commissioner shall also be qualified to teach in the school of the highest standing over which the commissioner has authority.

(c) The commissioner shall be appointed by the governor.

History.

Acts 1925, ch. 115, § 4; Shan. Supp., §§ 1487a19-1487a21; mod. Code 1932, §§ 2310-2312; Acts 1937, ch. 11, § 1; C. Supp. 1950, § 2312; Acts 1970, ch. 601, § 5; T.C.A. (orig. ed.), § 49-103.

4-3-803. Offices — Powers and duties.

The department of education shall have its offices in the state capitol and its commissioner is vested with such powers and required to perform such duties as are set forth in title 49, and is charged with the administration of such laws as the general assembly from time to time may enact.

History.

Acts 1925, ch. 115, § 3; Shan. Supp., § 1487a18; mod. Code 1932, § 2309; T.C.A. (orig. ed.), § 49-104; modified.

PART 9

[RESERVED]

PART 10

DEPARTMENT OF FINANCE AND ADMINISTRATION

4-3-1001. Creation.

There is hereby created the department of finance and administration.

History.

Acts 1959, ch. 9, § 2; 1961, ch. 97, § 1; modified.

Compiler's Notes.

The department of finance and administration, created by this section and § 4-3-101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

For the transfer of TennCare from the department of finance and administration to the department of health, see Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For an order clarifying Executive Orders Nos. 9 and 10 relative to the transfer of administrative staff from the department of mental health and mental retardation [department of mental health and developmental disabilities] to the department of finance and administration, see Executive Order No. 21 (July 29, 1999).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

Acts 2016, ch. 846, § 5 provided that the

division of benefits administration shall appear before the government operations joint evaluation committee on judiciary and government no later than December 1, 2016, to present the clinical outcome measures report conducted by Aon Hewitt.

Cross-References.

Creation of the department of finance and administration, § 4-3-101.

4-3-1002. Commissioner.

The department of finance and administration shall be under the charge and general supervision of the commissioner of finance and administration.

History.

Acts 1959, ch. 9, § 2; 1961, ch. 97, § 2; modified.

4-3-1003. Establishment and transfer of divisions.

(a) To discharge the authority, powers and duties hereby imposed upon the department of finance and administration and the commissioner of the department, there are created within the department the following divisions:

(1) The division of accounts;

(2) The division of administration;

(3) The division of benefits administration;

(4) The division of budget;

(5) The office of the inspector general; and

(6) The division of strategic technology solutions.

(b) The commissioner is authorized to assign to these divisions the duties imposed upon the department and the commissioner thereof. The commissioner is authorized to combine, consolidate or abolish any of these divisions, or to create such new divisions as are necessary to carry out the duties imposed upon the commissioner and the department.

History.

Acts 1937, ch. 33, § 15; 1939, ch. 11, § 10; C. Supp. 1950, § 255.15; 1959, ch. 9, § 3; 1961, ch. 97, § 3; 1972, ch. 542, § 4; 1972, ch. 543, § 12; 1975, ch. 286, § 1; T.C.A., § 4-323; Acts 1981, ch. 364, §§ 1, 2; 2013, ch. 454, § 41; 2020, ch. 690, §§ 4, 5.

Cross-References.

Division of real property management, duties, § 4-3-1009.

Reorganization of divisions, § 4-4-101.

4-3-1004. [Repealed.]

History.

Acts 1959, ch. 9, § 3; 1961, ch. 97, § 3; T.C.A., § 4-326; repealed by Acts 2020, ch. 690, § 6, effective June 11, 2020.

Compiler's Notes.

Former § 4-3-1004 concerned the data processing section.

4-3-1005. [Reserved.]

4-3-1006. Budget powers.

The department of finance and administration has the power and is required to:

(1) Prepare and submit to the governor, annually, a state budget docu-

ment in accordance with title 9, chapter 4, part 51;

(2) Prescribe forms for the preparation of the budget estimates by all the spending agencies of state government, and furnish every state officer, department and agency with a sufficient number of the budget estimate forms not later than October 15 of each year;

(3) Prescribe the classifications of expenditures and revenues for the purposes of budget making and accounting;

(4) Examine and recommend for approval the work program and quarterly allotments of each spending agency of state government before the appropriations made for such agency shall become available for expenditure;

(5) Examine and recommend for approval any changes made in the work program and quarterly allotments of any spending agency during the fiscal year;

(6) Investigate duplication of work among the departments and other agencies of state government, study the organization and administration of such departments and agencies, and formulate plans for better management and more efficient and economical operation;

(7) Prepare and report to the governor when requested, any financial data or statistics that the governor may require, such as monthly or quarterly estimates of the state's income, and cost figures on the current operations of state institutions and other agencies; and

(8) Examine all requisitions for purchases as the department may deem necessary, with power and authority to refuse to approve or honor any and all requisitions for purchases, except requisitions for purchases of the general assembly, state court system, attorney general and reporter, secretary of state, comptroller of the treasury, and state treasurer.

History.

Acts 1923, ch. 7, § 12; Shan. Supp., § 373a44; Code 1932, § 269; Acts 1933, ch. 92, §§ 1(3)-1(5); 1937, ch. 33, § 16; 1939, ch. 11, § 11; mod. C. Supp. 1950, § 255.16; impl. am. Acts 1959, ch. 9, § 3; Acts 1961, ch. 97, § 3; 1969, ch. 11, §§ 1, 2; T.C.A. (orig. ed.), § 4-324; Acts 2013, ch. 454, §§ 25, 29; 2020, ch. 690, § 7.

4-3-1007. Accounting powers.

The department of finance and administration has the power and is required to:

(1) Maintain a system of general accounts embracing all the financial transactions of state government;

(2) Examine and approve all contracts, requisitions, orders, payrolls and other documents, the purpose of which is to incur financial obligations against state government, and ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable, as the commissioner deems necessary with the objective of improving accountability and managing risk as provided for in title 9, chapter 18;

(3) Audit and approve all bills, invoices, accounts, payrolls and other evidences of claims, demands or charges against state government, and determine the regularity, legality and correctness of such claims, demands or charges, as the commissioner deems necessary with the objective of improv-

ing accountability and managing risk as provided for in title 9, chapter 18;

(4) Inquire as needed concerning articles and materials furnished or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or materials are fair, just and reasonable, and that all the requirements expressed and implied pertaining thereto have been complied with, and reject or disallow any excess;

(5) Make available monthly reports on all receipts, expenditures, appropriations, allotments, and encumbrances of the state government to the governor, the department of audit, and the head of the department, office, or agency directly concerned;

(6) Establish statewide accounting policies and practices that support the state's compliance with generally accepted accounting principles, state and federal laws, rules, and regulations. All such statewide policies shall become effective upon approval by the commissioner of finance and administration and the comptroller of the treasury;

(7) Prescribe such subsidiary accounts, including cost accounts, for the various departments, institutions, offices and agencies as may be desirable for purposes of administration, supervision and financial control;

(8) Examine at any time the accounts of every department, institution, office or agency, receiving appropriations from the state;

(9) Report to the attorney general and reporter for such action, civil or criminal, as the attorney general and reporter may deem necessary, and to the comptroller of the treasury, all facts showing illegality in the expenditure of public moneys, or in the collection of public revenues, or the misappropriation of public properties;

(10) Exercise the rights, powers and duties, except the power to collect taxes, conferred by law upon the comptroller of the treasury under title 8, chapter 4, and the rights, powers and duties conferred by § 9-2-107, insofar as these provisions relate to financial administration and general accounting control of the state government, involving the keeping of general accounts, the auditing before payment of all bills, or vouchers and the authorization of all claims against the state for which appropriations have been made;

(11) In consultation with the comptroller of the treasury, establish guidelines for the evaluation by agencies of their systems of internal accounting and administrative control as provided in title 9, chapter 18;

(12) Supervise and regulate the making of an inventory of all removable equipment and other movable property belonging to the state government or any of its departments, institutions or agencies, with the exception of those institutions expressly exempted from the operation of title 12, chapter 3, and keep the inventory current. This subdivision (12) shall not apply to the various collections of articles, specimens and relics placed under the charge of the state museum executive director; and

(13) Approve the use of electronic and other technological means to transfer funds whenever economically feasible, to eliminate paper documentation wherever feasible, and to increase fiscal efficiency and effectiveness.

History.

Acts 1923, ch. 7, § 12; Shan. Supp., § 373a44; Code 1932, § 269; Acts 1933, ch. 92, §§ 1(3)-1(5); 1937, ch. 33, § 24; 1939, ch. 11, § 12; mod. C. Supp. 1950, § 255.24; impl. am. Acts 1959, ch. 9, § 3; Acts 1961, ch. 97, § 3;

modified; T.C.A. (orig. ed.), § 4-326; T.C.A., § 4-325; Acts 1975, ch. 123, §§ 1, 2; 1983, ch. 129, § 2; 1987, ch. 149, § 4; 1987, ch. 150, § 4; 2009, ch. 106, §§ 2, 4; 2018, ch. 821, § 18; 2020, ch. 690, §§ 8-14.

Cross-References.

Audit of accounts and financial records of the state government, and of any department, institution, office or agency thereof, by the department of audit, § 4-3-304.

General account of state treasurer, reconciling to balances maintained by commissioner of finance and administration, § 8-5-109.

General ledger of state treasurer, reconciling with general ledger of commissioner of finance and administration, § 8-5-107.

4-3-1008. Preparation of uniform rules and regulations for payment of travel expenses for officers and employees.

The department of finance and administration, with the approval of the governor, has the power and is required to prepare uniform rules and regulations for the payment of travel expenses for officers and employees of all state departments, institutions and agencies. It is the legislative intent that such rules and regulations provide that an employee under normal circumstances shall be responsible for bearing travel expenses for no more than thirty (30) days from the date of filing a claim, subject to an audit of the claim as required. The commissioner is further authorized to prepare special regulations when the commissioner determines that special circumstances necessitate them. Proposed uniform rules and regulations and proposed special regulations shall become effective upon approval by the attorney general and reporter. Prior to filing with the attorney general and reporter, the commissioner shall submit the proposed uniform rules and regulations and proposed special regulations to the comptroller of the treasury for comment.

History.

Acts 1937, ch. 33, § 44a; 1939, ch. 11, § 28; C. Supp. 1950, § 255.46 (Williams, § 255.47); impl. am. Acts 1959, ch. 9, § 3; Acts 1961, ch. 91, § 3; 1972, ch. 543, §§ 13, 14; 1975, ch. 123, § 3; T.C.A. (orig. ed.), § 4-327; modified; Acts 1980, ch. 624, § 1; 1994, ch. 669, § 2; 2020, ch. 690, §§ 15-17.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Acts 1994, ch. 669, § 1 provided that it is the intent of the general assembly that:

"(1) the casualty risk program which was administered by the department of finance and administration shall be transferred to, and administered by, the department of the treasury on and after July 1, 1994;

"(2) all staff, staff positions, equipment, supplies, property, funds and other resources of the program shall be transferred to the department of the treasury;

"(3) references to the department of finance and administration relative to the casualty risk program appearing in Tennessee Code Annotated shall be deemed to be references to the department of the treasury. The code commission is directed to change references to the existing names of officials, offices, agencies and entities, wherever they appear in Tennessee Code Annotated, to conform to the name of officials, offices, agencies and entities created by the provisions of that act. The code commission is authorized to make grammatical changes in the provisions of Tennessee Code Annotated to effectuate such changes; and

"(4) all rules, policies, and decisions related to the casualty risk program promulgated or issued by the department of finance and administration prior to, and in effect on July 1, 1994, shall remain in force and effect and shall be administered and enforced by the department of the treasury until duly amended, repealed, expired, modified or superseded."

Cross-References.

Department of general services, centralization of services, § 4-3-1105.

4-3-1009. Powers relating to public buildings and property.

(a) The department of finance and administration has the power to:

(1) Prepare or cause to be prepared general plans and preliminary sketches and estimates for the public buildings to be erected for any department;

(2) Have general supervision and care of storerooms, offices and buildings leased for the use of the state government or any department, office or institution thereof; and

(3) Perform the duties with respect to the inventory of state property set forth in title 12, chapter 2.

(b) The department, through its division of real property management, has the authority and responsibility of allocating space in the Knoxville state office building and the Knoxville office building annex, but such authority does not extend to the Knoxville supreme court building.

(c)(1) The commissioner, through the division of real property management, has the authority and responsibility to review periodically the contract terms of leased facilities and to analyze proposed contract terms of leased facilities to determine if, whether for financial or program purposes, it is in the best interest of the state to directly own the facility. If the commissioner determines that direct ownership by the state is in the best interest, such recommendation shall be presented to the governor.

(2) Upon the approval by the governor for any recommendation that will cost more than one million dollars ($1,000,000), the commissioner shall present a recommendation to the fiscal review committee. Upon the approval by the fiscal review committee, the commissioner shall present a recommendation to the state funding board, including the analysis supporting the determination as to the best interest of the state, the anticipated cost, the funds currently appropriated for the lease payments, and any available debt authority.

(3) Upon approval by the governor for any recommendation that will cost one million dollars ($1,000,000) or less, the commissioner shall present a recommendation to the state funding board, including the analysis supporting the determination as to the best interest of the state, the anticipated cost, the funds currently appropriated for the lease payments, and any available debt authority.

History.

Acts 1923, ch. 7, § 33; 1925, ch. 95, § 1; Shan. Supp., §§ 373a85b, 3079a223b1; Code 1932, §§ 308, 1033; Acts 1937, ch. 33, §§ 54, 55; mod. C. Supp. 1950, § 255.54 (Williams, §§ 255.57, 255.58); Acts 1959, ch. 9, § 3; modified; T.C.A. (orig. ed.), § 4-309; Acts 1961, ch. 97, § 3; 1972, ch. 543, § 15; 1977, ch. 413, § 1; T.C.A., § 4-328; Acts 1980, ch. 741, §§ 6-9; 2003, ch. 224, § 1.

4-3-1010. Posting of report of travel and expense reimbursements on state website.

(a) In addition to their other powers and duties, the department of finance and administration and its commissioner are vested with all the authority, powers and duties given them by title 12, chapter 2.

(b) The commissioner of finance and administration shall cause to be posted on the official website of the state a report that contains all out-of-state travel expenditures and any expense reimbursements made for the expenditures to the governor, any member of the governor's cabinet, and cabinet level staff in

accordance with the comprehensive travel regulations of the state or any policy of the governor; provided, however, that information shall not be posted if the out-of-state travel occurred for the purpose of recruiting industry or economic development in the state and the information, in the judgment of the commissioner, has the potential to harm contract negotiations or otherwise place the state at a competitive disadvantage in seeking industrial or economic development opportunities. For the purposes of this subsection (b), "out-of-state travel expenditures" includes: expenses for which corresponding reimbursements are made; and direct travel expenditures, including airfare, travel, hotel, and any other expenses paid for directly by using a state-approved vendor or with the use of a state-issued payment card. The report shall include the purpose of the expenditures and any reimbursements made, and shall be reported by the person making the expenditures. The initial report shall be filed no later than fifteen (15) days following the last day of April 2006 and shall include all payments made from the first day of January 2006, until the last day of March 2006. Thereafter, the report shall be updated quarterly, no later than fifteen (15) days following the end of the quarter. The reports shall remain on the website until one (1) month following the end of the governor's term of office. The last quarter reported in each such term shall include the period of time from the last quarter reported until the regular November election at which the next governor will be elected, and the first report in each governor's term shall include the period of time from the regular November election until the end of the first quarter.

History.

Acts 1959, ch. 9, § 3; 1977, ch. 392, § 1; T.C.A., § 4-323; modified; Acts 1980, ch. 699, § 1; 2006 (1st Ex. Sess.), ch. 1, § 45; 2015, ch. 123, § 2; 2016, ch. 797, § 11; 2018, ch. 616, § 1; 2020, ch. 690, § 18.

Compiler's Notes.

Section 67-5-2505, referred to in (a), was repealed by Acts 2014, ch. 883, § 12, effective July 1, 2014.

4-3-1011. Background checks of certain employees and contractors.

As a condition of employment, the department of finance and administration is authorized to require its employees and contractors who have elevated and privileged access to data and personal information of state employees or citizens, or who support a governmental department, agency, office, or other entity whose employees, contractors, or vendors are subject to federal fingerprint background check requirements, to supply a fingerprint sample and submit to a criminal history background check to be performed by the Tennessee bureau of investigation and the federal bureau of investigation. The department shall develop a policy identifying which employees and contractors must supply a fingerprint sample and submit to a background check as a condition of employment.

History.

Acts 2020, ch. 689, § 1.

Compiler's Notes.

Former § 4-3-1011, concerning certification of board fees, was transferred to § 9-4-5117 by Acts 2013, ch. 454, § 13, effective May 16, 2013.

4-3-1012. Transfer of office of energy management functions relating to state buildings and state-owned facilities.

(a) The state building energy management program shall be transferred from the department of general services to the department of finance and administration, as to any functions related to the energy management program for state buildings and state-owned facilities. All staff, staff positions, equipment, supplies, property, funds and other resources of the functions referenced above shall be transferred to the department of finance and administration. Energy management functions not related to state buildings and state-owned facilities shall remain with the department of general services.

(b) The duties of the department relative to energy management shall include:

(1) Defining and implementing specific yearly conservation/energy management goals for state-owned facilities in coordination with the state architect's office and the state building commission;

(2) Defining and implementing an energy efficiency code for future state buildings to include a review of renewable options by means of life-cycle analysis. This life-cycle analysis of renewable options shall be mandatory;

(3) Developing and implementing, in coordination with the department of general services, a formalized monitoring and analyzing schedule for utility data from state buildings, including both costs and usage;

(4) Developing and implementing an energy management program for state government; and

(5) Preparing an annual report on the activities of the department relative to energy management. The department shall publish the report on the department's website and shall submit the report to the governor, the speakers of the senate and the house of representatives, the chairs of the government operations committees of the senate and the house of representatives and the chairs of the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, or their successor committees. The report shall include savings realized by the state as a result of the office's activities expressed in both units of energy saved and monetary cost-avoidance.

(c) The energy management program described in subsection (b) may include, but is not limited to, implementing energy cost saving measures in buildings under the jurisdiction of the state building commission. The measures may include, but shall not be limited to, maintenance, repair or replacement of lighting and mechanical equipment and related controls. Energy cost saving measures may be implemented through contracts with energy professionals, including, but not limited to, energy service companies, commissioning and retro commissioning firms and agencies and energy auditing consultants. Such contracts are subject to approval by the state building commission. All departments, institutions and agencies having control of, or responsibility for, the management or operation of buildings under the jurisdiction of the state building commission shall cooperate with state building energy management in implementing energy cost saving measures.

History.

Acts 1999, ch. 457, § 7; 2008, ch. 717, §§ 4, 5; 2009, ch. 529, §§ 2, 3; 2012, ch. 604, § 1; 2013, ch. 236, § 3.

Compiler's Notes.

For an order transferring management and operation of the Division of Real Property Administration from the Department of Finance and Administration to the Department of General Services, see Executive Order No. 7 (September 30, 2011).

Acts 2009, ch. 529, § 1 provided that the act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009."

For the Preamble to the Tennessee Clean Energy Future Act of 2009, please refer to Acts 2009, ch. 529.

Acts 2009, ch. 529, § 30 provided that the provisions of the act, which amended subsection (a) and added subsection (c), shall be subject to sunset review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in 2014.

4-3-1013. Authority to develop prescription drug programs and to contract with pharmacy benefits managers (PBMs).

(a) The TennCare bureau is authorized to develop prescription drug programs and to contract with one (1) or more pharmacy benefit managers (PBMs) or other appropriate third party contractors to administer all or a portion of such prescription drug programs for the TennCare program. It is the legislative intent that, insofar as practical, any such pharmacy programs shall be developed and implemented in a manner that seeks to minimize undue disruption in successful drug therapies for current TennCare enrollees.

(b) Under such a contract, a PBM may be directed by the TennCare bureau to:

(1) Provide information to the state TennCare pharmacy advisory committee for making recommendations related to a state preferred drug list (PDL);

(2) Provide claims processing and administrative services for the TennCare program;

(3) Provide data on utilization patterns to the bureau of TennCare, the department of finance and administration, TennCare managed care organizations, the University of Tennessee Health Science Center, and other entities determined by the TennCare bureau;

(4) Conduct prospective and retrospective drug utilization review as directed by the bureau of TennCare;

(5) Establish procedures for determining potential liability of third party payers, including, but not limited to, Medicare and private insurance companies, for persons receiving pharmacy services through the state of Tennessee;

(6) Maintain a retail pharmacy network to provide prescription drugs through state programs;

(7) Set pharmacy reimbursement rates and dispensing fee schedules necessary to maintain an adequate retail pharmacy network and increase the cost-effectiveness of state pharmacy purchases;

(8) Negotiate supplemental rebates with pharmaceutical manufacturers for prescription drug expenditures;

(9) Propose other initiatives to the bureau of TennCare to maintain or improve patient care while reducing prescription drug costs; and

(10) Provide other services as directed by the bureau of TennCare.

(c) The state TennCare program shall be authorized to receive one hundred

percent (100%) of all rebates and any other financial incentives directly or indirectly resulting from the state's contract with any PBM.

(d) The PBM contract may include performance goals and financial incentives for success or failure in attaining those goals. It is the legislative intent that such goals and incentives shall include the reliable and timely performance of any system of prior authorization that may be implemented pursuant to pharmacy programs authorized by this section.

(e) To the extent permitted by federal law and the TennCare waiver, the bureau of TennCare may implement, either independently or in combination with a PDL, cost saving measures for pharmaceutical services including, but not limited to, tiered co-payments, reference pricing, prior authorization, step therapy requirements, exclusion from coverage of drugs or classes of drugs, mandating the use of generic drugs, and mandating the use of therapeutic equivalent drugs.

(f) The TennCare bureau shall be required to annually report to the health committee of the house of representatives, the health and welfare committee of the senate, and to the finance, ways and means committees of the senate and the house of representatives concerning pharmacy benefits under the medical assistance program provided pursuant to title 71, chapter 5, on or before January 15 of each calendar year, beginning on January 15, 2013. The report shall specifically report on the use and cost of opioids and other controlled substances in the program.

History.

Acts 2003, ch. 350, § 2; 2004, ch. 673, § 18; 2006, ch. 915, § 2; 2011, ch. 410, § 6(a); 2012, ch. 1031, § 5; 2013, ch. 236, § 49; 2016, ch. 797, § 8; 2019, ch. 345, § 8; 2021, ch. 64, § 3.

Compiler's Notes.

Acts 2006, ch. 915, § 1 provided that the title of the act is and may be cited as the "TennCare Pharmacy Cost to Dispense Act of 2006."

Acts 2006, ch. 915, §§ 3 and 4 provided that the implementation of the provisions of the act, which added subsection (f), shall be subject to the availability of funding for such purpose; and that it is the legislative intent that the act shall be funded from state, federal, foundation or other private funds or from any combination of such funds.

Acts 2006, ch. 915 was not funded in the general appropriations act for the 2006-2007 fiscal year. On August 7, 2006, the TennCare bureau advised the fiscal review committee that no private funding source has been obtained. On August 11, 2006, the fiscal review committee informed the Tennessee code commission that "[i]f private funds are not provided, Public Chapter 915 would be null and void for lack of a timely appropriation providing the estimated first year's funding, as required by Article II, Section 24 of the Constitution of the State of Tennessee."

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Amendments.

The 2021 amendment substituted "health committee of the house of representatives" for "committee of the house of representatives having oversight over TennCare" in (f).

Effective Dates.

Acts 2021, ch. 64, § 132. March 29, 2021.

Attorney General Opinions.

Authority of the Bureau of TennCare to negotiate supplemental manufacturer rebates for TennCare prescription drug purchases, OAG 05-001, 2005 Tenn. AG LEXIS 1 (1/05/05).

4-3-1014. Authority to create prescription drug purchase program.

In accordance with applicable law:

(1) The department of finance and administration is authorized to create a program whereby local government entities, including, but not limited to county jails, can purchase prescription drugs through state methods at

reduced prices;

(2) The department of general services is authorized to sell drugs to participating local entities that have certified pharmacists on staff or require wholesalers contracting with the department of general services to sell prescription drugs to participating local entities at discounted rates.

History.
Acts 2003, ch. 350, § 5.

Compiler's Notes.
Acts 2003, ch. 350, § 6 provided that if a court of competent jurisdiction enjoins, restrains or stays programs authorized by the act, then the department of finance and administration or the bureau of TennCare as appropriate is authorized to proceed to implement as appropriate those portions of the act that have not been lawfully enjoined, restrained or stayed.

4-3-1015. [Repealed.]

History.
Acts 2010, ch. 913, §§ 2-4; repealed by Acts 2020, ch. 690, § 19, effective June 11, 2020.

Code Commission Notes. Former § 4-3-1015 (Acts 2003, ch. 355, § 51), concerning transfers from funds, reserve accounts and programs to the state general fund, was deleted as obsolete by the code commission in 2005.

Compiler's Notes.
Former § 4-3-1015 concerned EFFECTs position in state government to establish accountability process.

4-3-1016. Restrictions on carry forwards and transfers of funds to the state general fund.

(a) Notwithstanding any law to the contrary, subject to the specific provisions of an appropriation act, the commissioner of finance and administration is authorized to deny carry forwards for, and to transfer funds from, the funds, reserve accounts or programs identified in this section to the state general fund for the purpose of meeting the requirements of funding the operations of state government for the fiscal year ending June 30, 2006, and subsequent fiscal years. The authorization provided for in this subsection (a) shall not apply to allow the transfer of any fund balances that are mandated by federal law to be retained in such fund. This authority shall only apply to transfers and carry forwards necessary to fund the expenditures for the state for the fiscal year ending June 30, 2006, and subsequent fiscal years.

(b) No funds shall be transferred unless specifically appropriated in an appropriations act and such funds shall only be expended in accordance with such act.

(c) Notwithstanding any provision of this section to the contrary, no transfers are authorized from department of transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67, except as authorized by § 47-18-1311.

(d) In the fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2014, June 30, 2020, and June 30, 2021, transfers are authorized from the following funds, reserve accounts and programs:

(1) Department of finance and administration, for the department of revenue, computerized titling and registration system accumulated fees, created or referenced in title 55, chapter 4, part 1;

(2) Department of finance and administration, domestic violence community education fund, created or referenced in title 36, chapter 3, part 6;

(3) Department of finance and administration, electronic fingerprint imaging systems fund, created or referenced in title 67, chapter 4, part 6;

(4) Department of finance and administration, family violence shelter reserve, created or referenced in title 36, chapter 6, part 4;

(5) Department of finance and administration, drug courts reserve, created or referenced in title 16, chapter 22;

(6) Department of finance and administration, state health planning reserve, created or referenced in title 68, chapter 11, part 16;

(7) Department of finance and administration, sexual assault program, created or referenced in title 40, chapter 24;

(8) Department of finance and administration, domestic assault defendant fines program, created or referenced in title 39, chapter 13, part 1;

(9) Department of correction, community correction program grants, created or referenced in title 40, chapter 36, part 3;

(10) Department of correction, supervision and rehabilitation accumulated fees, created or referenced in title 40, chapter 28, part 2;

(11) Department of correction, GPS offender tracking fees, created or referenced in title 40, chapter 28, part 2;

(12) Department of agriculture, agricultural resources conservation fund, created or referenced in title 67, chapter 4, part 4;

(13) Department of agriculture, agricultural regulatory fund, created or referenced in title 43, chapter 1, part 7;

(14) Department of environment and conservation, Tennessee board of water quality, oil and gas reclamation fund, created or referenced in title 60, chapter 1, part 4;

(15) Department of environment and conservation, solid waste management fund, created or referenced in title 68, chapter 211, part 8;

(16) Department of environment and conservation, used oil collection fund, created or referenced in title 68, chapter 211, part 10;

(17) Department of environment and conservation, hazardous waste remedial action fund, created or referenced in title 68, chapter 212, part 2;

(18) Department of environment and conservation, drycleaner environmental response fund, created or referenced in title 68, chapter 217;

(19) Department of environment and conservation, environmental protection fund, created or referenced in title 68, chapter 203;

(20) Department of environment and conservation, heritage conservation trust fund, created or referenced in title 11, chapter 7;

(21) Department of environment and conservation, lead based paint abatement fund, created or referenced in title 68, chapter 131, part 4;

(22) Department of environment and conservation, voluntary cleanup oversight and assistance fund, created or referenced in title 68, chapter 212, part 2;

(23) Department of environment and conservation, abandoned land program, created or referenced in title 59, chapter 8, part 2;

(24) Department of environment and conservation, underground storage tank fund, created or referenced in title 68, chapter 215, part 1;

(25) Department of environment and conservation, surface mine reclamation fund, created or referenced in title 59, chapter 8, part 2;

(26) Department of environment and conservation, local parks land acquisition fund, created or referenced in title 67, chapter 4, part 4;

(27) Department of environment and conservation, state lands acquisition fund, created or referenced in title 67, chapter 4, part 4;

(28) Tennessee wildlife resources agency, wetland acquisitions fund, created or referenced in title 67, chapter 4, part 4;

(29) Department of correction, sex offender treatment fund, created or referenced in title 39, chapter 13, part 7;

(30) Department of correction, work release supervision and rehabilitation accumulated fees, created or referenced in title 40, chapter 28, part 2;

(31) Department of economic and community development, FastTrack fund, created or referenced in chapter 3, part 7 of this title;

(32) Department of economic and community development, film and television incentive grants fund, created or referenced in chapter 3, part 49 of this title;

(33) Department of economic and community development, job skills fund, created or referenced in title 50, chapter 7, part 4;

(34) Education trust fund, created or referenced in title 49, chapter 3, part 3;

(35) Department of education, driver education fund, created or referenced in title 67, chapter 4, part 6;

(36) Department of education, safe schools program, created or referenced in title 49, chapter 6, part 43;

(37) Department of education, special schools, created or referenced in title 49, chapter 50, part 10;

(38) Department of education, Alvin C. York Institute operational reserve, created or referenced in title 49, chapter 50, part 10;

(39) Department of education, Tennessee school for the blind operational reserve, created or referenced in title 49, chapter 50, part 10;

(40) Department of education, Tennessee school for the deaf operational reserve, created or referenced in title 49, chapter 50, part 10;

(41) Department of education, West Tennessee school for the deaf operational reserve, created or referenced in title 49, chapter 50, part 10;

(42) Department of education, boys and girls clubs reserve, created or referenced in title 36, chapter 6, part 4;

(43) Department of financial institutions, bank fees, created or referenced in title 45, chapter 1, part 1, and any other law and such funds in a deferred revenue account;

(44) Department of commerce and insurance fees, created or referenced in Acts 2001, ch. 333, and title 56, chapter 2, part 5; title 56, chapter 4, part 1; title 56, chapter 6, part 1; title 56, chapter 14; title 56, chapter 32; title 56, chapter 35, part 1; and title 55, chapter 18;

(45) Department of commerce and insurance, emergency communications funds, created or referenced in title 7, chapter 86, part 1;

(46) Department of commerce and insurance, manufactured housing fund, created or referenced in title 68, chapter 126, part 4;

(47) Department of labor and workforce development, employment security special administrative fund, created or referenced in title 50, chapter 7,

part 5;

(48) Department of labor and workforce development, Tennessee Occupational Safety and Health Act fund, created or referenced in title 50, chapter 6, part 4;

(49) Department of labor and workforce development, uninsured employers fund, created or referenced in title 50, chapter 6, part 8;

(50) Department of mental health and substance abuse services or the department of health, alcohol and drug addiction treatment fund, created or referenced in title 40, chapter 33, part 2;

(51) Department of health, health access incentive account, created or referenced in title 66, chapter 29, part 1;

(52) Department of health, child safety fund, created or referenced in title 55, chapter 9, part 6;

(53) Department of health, nursing home residents fund, created or referenced in title 68, chapter 11, part 8;

(54) Department of health, traumatic brain injury fund, created or referenced in title 68, chapter 55, part 4;

(55) Department of revenue, [former] C.I.D. anti-theft fund, created or referenced in title 55, chapter 3, part 2;

(56) Tennessee bureau of investigation, fingerprint criminal history database accumulated fees, created or referenced in title 39, chapter 17, part 13;

(57) Tennessee bureau of investigation, expunged criminal offender pretrial diversion database accumulated fees, created or referenced in title 38, chapter 6, part 1 and title 40, chapter 32;

(58) Tennessee bureau of investigation, intoxicant testing fund, created or referenced in title 55, chapter 10, part 4;

(59) Tennessee bureau of investigation, handgun permit reserve, created or referenced in title 39, chapter 17, part 13;

(60) Department of safety, driver education fund, created or referenced in title 67, chapter 4, part 6;

(61) Department of safety, motorcycle rider safety fund, created or referenced in title 55, chapter 51;

(62) Department of safety, handgun permit reserve, created or referenced in title 39, chapter 17, part 13;

(63) Department of children's services, child abuse prevention reserve, created or referenced in title 36, chapter 6, part 4;

(64) Court system Tennessee judicial information system fund, created or referenced in title 16, chapter 3, part 8;

(65) Court system divorcing parents mediation fund, created or referenced in title 36, chapter 6, part 4;

(66) Court system court automation hardware replacement revolving loan fund, created or referenced in title 16, chapter 3, part 10;

(67) Court system municipal court clerks training and education program, created or referenced in title 16, chapter 18, part 3;

(68) Secretary of state voting machines loan fund, created or referenced in title 2, chapter 9;

(69) Secretary of state, voting machine reserve fund, created or referenced in title 2, chapter 9;

(70) Secretary of state, Blue Book reserve, created or referenced in title 8, chapter 3, part 1;

(71) Ethics commission reserve, created or referenced in title 3, chapter 6, part 1;

(72) State treasurer, small and minority-owned business assistance program, created or referenced in title 65, chapter 5, part 1;

(73) Health services and development agency fund, created or referenced in title 68, chapter 11, part 16;

(74) Tennessee public utility commission, deferred revenue account, created or referenced in title 65, chapter 1, part 1 and any other reserve fund maintained by the Tennessee public utility commission;

(75) Tennessee public utility commission, Tennessee relay services/telecommunications devices access program, created or referenced in title 65, chapter 21, part 1; and

(76) Tennessee advisory commission on intergovernmental relations, accumulated balances or carry-over funds, created or referenced in chapter 10 of this title.

(e) In the fiscal years ending June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2020, and June 30, 2021, in addition to the transfers authorized in subsection (d), transfers are authorized from the following additional funds, reserve accounts and programs:

(1) Department of correction, confiscated cash fund, created or referenced in chapter 6, part 1 of this title;

(2) Department of economic and community development, [former] biofuels manufacturers incentive fund, created or referenced in title 67, chapter 3, part 4;

(3) Department of health, diabetes prevention and health improvement account, created or referenced in former chapter 40, part 4 of this title [repealed]; and

(4) Department of environment and conservation, natural resources trust fund, created or referenced in title 11, chapter 14, part 3.

(f) In the fiscal years ending June 30, 2009, June 30, 2011 and June 30, 2014, transfers shall not be made from the following funds, reserve accounts or programs:

(1) Department of transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67, except as otherwise provided by law;

(2) Department of commerce and insurance, state board of accountancy fund, created or referenced in title 62, chapter 1, part 1;

(3) Department of commerce and insurance, division of regulatory boards fund, created or referenced in title 56, chapter 1, part 3; and

(4) Department of health, health-related boards fund, created or referenced in title 63, chapter 1, part 1.

(g) Notwithstanding Acts 2001, ch. 333, § 9 and any other law to the contrary, transfers are authorized from the department of commerce and insurance fees increased by Acts 2001, ch. 333.

(h) Other law to the contrary notwithstanding, in the year ending June 30, 2009, reserves of the Tennessee public utility commission, including the

deferred revenue account created or referenced in title 65, chapter 1, part 1, the assistive telecommunication device distribution program reserve created or referenced in title 65, chapter 21, part 1, and any other reserve fund maintained by the commission are available to the commission for its operational costs; and such reserves may be transferred between operational accounts of the commission.

(i) In the fiscal years ending June 30, 2018, June 30, 2020, and June 30, 2021, transfers are authorized from the department of safety, handgun permit reserve, created or referenced in title 39, chapter 17, part 13.

(j) In the fiscal years ending June 30, 2020, and June 30, 2021, in addition to the transfers authorized in subsections (d) and (k), transfers are authorized from the following additional funds, reserve accounts, and programs:

(1) Attorney general and reporter, litigation settlement funds reserve, except as otherwise provided by law;

(2) District attorneys general conference, district attorneys expunction fund, created or referenced in title 40, chapter 32;

(3) District public defenders conference, public defenders expunction fund, created or referenced in title 40, chapter 32;

(4) Tennessee public utility commission, underground damage prevention fund, created or referenced in title 65, chapter 31;

(5) Tennessee arts commission, reserve for new specialty earmarked license plates, created or referenced in title 55, chapter 4, part 3;

(6) Department of finance and administration, office of inspector general reserve, created or referenced in title 71, chapter 5, part 25;

(7) Department of finance and administration, victim notification fund, created or referenced in title 67, chapter 4, part 6;

(8) Department of finance and administration, horse trailer specialty license plate reserve, created or referenced in title 55, chapter 4, part 3;

(9) Bureau of TennCare, Cover Tennessee litigation settlement reserve, except as otherwise provided by law;

(10) Department of agriculture, animal population specialty license plate reserve, created or referenced in title 55, chapter 4, part 2;

(11) Department of agriculture, agricultural specialty earmarked license plate reserve, created or referenced in title 55, chapter 4, part 2;

(12) Department of environment and conservation, state parks specialty license plate reserve, created or referenced in title 55, chapter 4, part 2;

(13) Department of environment and conservation, state parks Ocoee River recreation and economic development fund, created or referenced in title 11, chapter 8;

(14) Department of environment and conservation, Tennessee historical commission, Tennessee Civil War or War Between the States site preservation fund, created or referenced in chapter 11, part 1 of this title;

(15) Department of environment and conservation, Tennessee historical commission, historic property land acquisition fund, created or referenced in chapter 11, part 1 of this title;

(16) Department of environment and conservation, tire environmental fund, created or referenced in title 68, chapter 211, part 3;

(17) Department of environment and conservation, state parks birds of prey specialty license plate reserve, created or referenced in title 55, chapter

4, part 2;

(18) Tennessee wildlife resources agency, wildlife resources fund, created or referenced in title 70, chapter 1, part 4;

(19) Tennessee wildlife resources agency, boating safety act reserve, created or referenced in title 69, chapter 9, part 2;

(20) Department of education, energy efficient schools initiative reserve, created or referenced in title 49, chapter 17;

(21) Tennessee higher education commission, postsecondary licensure fee reserve, created or referenced in title 49, chapter 7, part 20;

(22) Attorney general and reporter, consumer affairs division reserve, created or referenced in title 40, chapter 33, part 2;

(23) Department of commerce and insurance, reduced cigarette ignition propensity and firefighter protection act enforcement fund, created or referenced in title 68, chapter 102, part 5;

(24) Tennessee corrections institute, local correctional officer training fund, created or referenced in title 41, chapter 7;

(25) Department of commerce and insurance, cemetery consumer protection account reserve, created or referenced in title 46, chapter 1, part 1;

(26) Department of commerce and insurance, pre-need funeral consumer protection account reserve, created or referenced in title 62, chapter 5, part 4;

(27) Department of commerce and insurance, securities industry education and enforcement fees, created or referenced in title 48, chapter 1, part 1;

(28) Department of commerce and insurance, insurance industry education and enforcement fees, created or referenced in title 56, chapter 53, part 1;

(29) Department of commerce and insurance, closed estate fund, created or referenced in title 56, chapter 9, part 3;

(30) Department of military, station commander's upkeep and maintenance fund, created or referenced in title 58, chapter 1, part 5;

(31) Department of health, St. Jude Children's Research Hospital specialty license plate reserve, created or referenced in title 55, chapter 4, part 2;

(32) Department of safety, electronic citation fee reserve, created or referenced in title 55, chapter 10, part 2;

(33) Department of environment and conservation, underground storage tank settlement funds, except as otherwise provided by law;

(34) Department of environment and conservation, solid waste settlement funds, except as otherwise provided by law;

(35) Department of environment and conservation, superfund settlement funds, except as otherwise provided by law;

(36) Department of environment and conservation, leaking underground storage tank settlement funds, except as otherwise provided by law;

(37) Court system, access to justice program reserve, created or referenced in Supreme Court Rule 50 and title 16, chapter 1;

(38) Court system, board of professional responsibility reserve, created or referenced in Supreme Court Rule 9 and title 16, chapter 1;

(39) Court system, Tennessee lawyers assistance program reserve, created or referenced in Supreme Court Rule 33 and title 16, chapter 1;

(40) Court system, commission on continuing legal education program reserve, created or referenced in Supreme Court Rule 21 and title 16, chapter 1;

(41) Court system, judicial commissioner continuing education account reserve, created or referenced in title 67, chapter 4, part 6;

(42) District attorneys general conference, fraud and economic crimes reserve, created or referenced in title 40, chapter 3, part 2;

(43) State treasurer, state pooled investment fund administrative reserve, created or referenced in title 9, chapter 4, part 6;

(44) State treasurer, educator liability fund, created or referenced in title 9, chapter 8, part 2;

(45) Department of correction, TDOC confiscated cash fund, created, or referenced in title 4, chapter 6, part 1;

(46) Public defenders conference, indigent defense local litigation tax reserve, created or referenced in title 40, chapter 14, part 2;

(47) Secretary of state, fantasy sports fund, created or referenced in title 47, chapter 18, part 16;

(48) State treasurer, financial literacy program reserve, created or referenced in title 49, chapter 6, part 17;

(49) State treasurer, electronic monitoring indigency fund, created or referenced in title 55, chapter 10, part 4;

(50) Department of finance and administration, electronic monitoring indigency fund, created or referenced in title 55, chapter 10, part 4;

(51) Department of finance and administration, child abuse fund, created or referenced in title 39, chapter 13, part 5;

(52) Department of finance and administration, anti-human trafficking fund, created or referenced in title 39, chapter 13, part 3;

(53) TennCare, maintenance of coverage trust fund, created or referenced in title 71, chapter 5, part 1;

(54) TennCare, nursing home assessment trust fund, created or referenced in title 71, chapter 5, part 10;

(55) Department of environment and conservation, settlement funds from Lenoir v. Porters Creek Watershed District, 586 F.2d 1081 (1978), except as otherwise provided by law;

(56) Department of environment and conservation, state lands acquisition compensation fund, created or referenced in title 67, chapter 4, part 4;

(57) Department of environment and conservation, settlement funds from Tennessee v. Roane Holdings, Ltd., 835 F.Supp.2d 527 (2011), except as otherwise provided by law;

(58) Department of correction, Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004 reserve, created or referenced in title 40, chapter 39, part 2;

(59) Department of commerce and insurance, Tennessee Professional Employee Organization Act reserve, created or referenced in title 62, chapter 43;

(60) Department of labor and workforce development, employee misclassification education and enforcement fund, created or referenced in title 50,

chapter 6, part 9;

(61) Department of health, trauma system fund, created or referenced in title 68, chapter 59; and

(62) Department of revenue, uninsured motorist identification restricted fund, created or referenced in title 55, chapter 12, part 2.

(k) In the fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011 and June 30, 2014, transfers are authorized from the following funds, reserve accounts and programs:

(1) Department of commerce and insurance, state board of accountancy fund, created or referenced in title 62, chapter 1, part 1;

(2) Department of commerce and insurance, division of regulatory boards fund, created or referenced in title 56, chapter 1, part 3;

(3) Department of health, health-related boards fund, created or referenced in title 63, chapter 1, part 1;

(4) Department of commerce and insurance, real estate education and recovery education fund, created or referenced in title 62, chapter 13, part 2;

(5) Department of commerce and insurance, real estate education and recovery claims fund, created or referenced in title 62, chapter 13, part 2; and

(6) Department of commerce and insurance, auctioneer education and recovery account, created or referenced in title 62, chapter 19.

(*l*) In the fiscal years ending June 30, 2020, and June 30, 2021, transfers shall not be made from the following funds, reserve accounts or programs:

(1) Tennessee board of court reporting fund, created or referenced in title 20, chapter 9, part 6;

(2) Department of agriculture, beef promotion board reserve, created or referenced in title 43, chapter 29; and

(3) Department of agriculture, cotton growers' organization reserve, created or referenced in title 43, chapter 6, part 4.

History.

Acts 2004, ch. 512, § 1; 2005, ch. 500, § 10; 2008, ch. 1191, § 1; 2009, ch. 197, § 1; 2009, ch. 531, §§ 14, 15, 19; 2010, ch. 1100, § 8; 2011, ch. 509, § 1; 2012, ch. 575, § 1; 2012, ch. 727, § 2; 2014, ch. 917, §§ 5, 6, 8, 9; 2017, ch. 94, §§ 4, 77; 2018, ch. 839, § 3; 2018, ch. 1063, § 1; 2020, ch. 759, §§ 1-4, 12, 13.

Compiler's Notes.

For an Order transferring the bureau of alcohol and drug abuse services from the department of health to the department of mental health and developmental disabilities [now the department of mental health or the department of intellectual and developmental disabilities], except for functions related to the licensing of alcohol and drug abuse counselors, see Executive Order No. 44 (February 23, 2007).

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the preamble to the act concerning transfers of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which amended subdivisions (d)(9)-(11), shall be fully accomplished on or before January 1, 2013.

Acts 2013, ch. 94, § 1 provided that the state oil and gas board reclamation fund, formerly referred to in subdivision (d)(14), be changed to

the Tennessee board of water quality, oil and gas reclamation fund, effective April 8, 2013.

Title 56, chapter 14, part 1 referenced in (d)(44) was renumbered as title 56, chapter 14 by the authority of the code commission in 2016.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Attorney General Opinions.

Use of highway funds to pay other state expenditures, OAG 07-155, 2007 Tenn. AG LEXIS 155 (11/21/07).

Transfer of fees to general fund, OAG 14-67, 2014 Tenn. AG Lexis 69 (7/1/14)

4-3-1017. Energy management program — Development and implementation through the state building energy management program.

(a) In developing and implementing an energy management program for state government under §§ 4-3-1017 — 4-3-1019, the department, through the state building energy management program, may include:

(1) Development, in coordination with the emergency management agency, of contingency plans for the most efficient use of energy by state buildings;

(2) Development and implementation of projects using renewable energy resources in state operations and procedures; and

(3) Development of a program to ascertain the energy use of each state department, agency, college, university or other institution, to recommend specific plans for energy use reduction to such entities, and to monitor the implementation of such plans.

(b) This program shall be implemented by all departments and agencies of the executive branch and by all state colleges and universities operated by the board of trustees of the University of Tennessee or the state board of regents.

History.

Acts 1983, ch. 429, § 9; 1999, ch. 457, § 1; Acts 2007, ch. 72, § 3; T.C.A. § 4-3-1107; Acts 2008, ch. 718, § 1; 2009, ch. 529, §§ 4, 5.

Compiler's Notes.

Former § 4-3-1107 was transferred to this section by Acts 2007, ch. 72, § 3, without amendment, effective July 1, 2007.

Acts 2009, ch. 529, § 1 provided that the act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009."

For the Preamble to the Tennessee Clean Energy Future Act of 2009, please refer to Acts 2009, ch. 529.

Acts 2009, ch. 529, § 30 provided that the provisions of the act, which amended the introductory paragraph of subsection (a) and amended subdivision (a)(2), shall be subject to sunset review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in 2014.

4-3-1018. Energy management program — Liaisons — Action — Reevaluation.

(a) To assist the department of finance and administration in developing an energy management plan for state government under §§ 4-3-1017 — 4-3-1019, each department of state government, institution or agency having control of or responsibility for the management or operation of a building used by state government, including the postsecondary public institutions and subparts of the University of Tennessee, the state board of regents and the state board of education, whether owned or leased, shall designate a representative for each building or group of buildings under one (1) management as a liaison with the

department. Such person shall be the building manager or superintendent or someone familiar with the operation of the building.

(b) Each person designated as a liaison with the department shall cooperate with and assist the department in conducting energy audits of the building or group of buildings for which the person is the designated liaison, as well as any other studies or plans carried out by the department under this chapter or energy efficiency codes. Duties of the person shall include, but not be limited to, collecting energy use and other data requested by the department, assisting the department in identifying energy use reduction opportunities, implementing energy use reduction efforts and monitoring and reporting results following such efforts.

(c)(1) When the department, in accordance with §§ 4-3-1017 — 4-3-1019, makes recommendations for energy conservation measures in any building for which an energy audit, or other similar study, has been conducted, it is the duty of the department, institution, board or agency and the building superintendent or manager to implement these recommendations.

(2) Implementation shall occur as soon as is feasible, taking into account the nature of the recommendations and the availability of personnel for implementation.

(3) Any recommendation in conflict with health or building codes shall be superseded by such codes, and such conflict shall be reported to the department.

(4) Any recommendation requiring capital outlays for equipment, building modifications, or similar actions and for which there are no appropriated funds, shall be submitted by the department and the involved department, institution, board, commission or agency to the state building commission, with an estimate of savings that would result from implementation of such recommendations, the anticipated costs of implementation and a recommendation for action. Such submissions shall be made and shall pass through such intermediate steps as are required by the laws and regulations governing capital requests or building projects by such department, institution, board, commission or agency.

(d)(1) After a recommendation has been implemented and in effect for a reasonable period of time, the effects and results of the implementation shall be reevaluated by the department, in cooperation with the designated building liaison.

(2) In reevaluating the recommendations, the department shall consider any hardship or inconvenience, either to affected workers or the public, caused by such recommendation, the actual, as opposed to estimated, savings effected by such recommendations, and such other factors as the department, the liaison persons or the involved department, institution or agency may consider important.

(3) After such reevaluation, any implemented recommendation may be modified or rescinded.

(4) The department shall report to the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, or their successor committees, on the implementation of the plan, and on compliance therewith. Copies of these reports will be made available to interested agencies.

History.

Acts 1983, ch. 429, § 9; 1998, ch. 605, § 1; 1999, ch. 457, §§ 2, 3; 2007, ch. 72, §§ 2, 4; T.C.A. § 4-3-1108; Acts 2009, ch. 529, § 6; 2012, ch. 604, § 2; 2013, ch. 236, § 3.

Compiler's Notes.

Former § 4-3-1108 was transferred to this section by Acts 2007, ch. 72, § 4, effective July 1, 2007.

Acts 2009, ch. 529, § 1 provided that the act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009."

For the Preamble to the Tennessee Clean Energy Future Act of 2009, please refer to Acts 2009, ch. 529.

Acts 2009, ch. 529, § 30 provided that the provisions of the act, which amended subsection (b), shall be subject to sunset review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in 2014.

4-3-1019. Energy management program — Interagency cooperation.

(a) To facilitate coordination of state building energy conservation and retrofit measures to be developed or to be implemented within state government, including public institutions of higher education, and to prevent duplication of such plans or programs, the departments of general services, environment and conservation, the state building commission, the Tennessee higher education commission, the state board of regents, the board of trustees of the University of Tennessee, and the state board of education shall cooperate with the department of finance and administration and shall supply information concerning any retrofit proposals or consulting projects involving energy conservation within the proposing or consulting entity that are developed independently of the department of finance and administration.

(b) The information provided for in subsection (a) would include requests for funding or consulting contracts for building energy management programs or requests for funding of energy conservation retrofits, and should be furnished prior to approval of the request.

(c) The department of finance and administration may comment on any such plan or program, including noting the existence of a similar plan or program, but shall have no power to postpone or deny this request.

History.

Acts 1983, ch. 429, § 9; 1999, ch. 457, §§ 5, 6; 2007, ch. 72, § 5; T.C.A. § 4-3-1110; Acts 2016, ch. 743, § 12.

Compiler's Notes.

Former § 4-3-1110 was transferred to this section by Acts 2007, ch. 72, § 5, without amendment, effective July 1, 2007.

4-3-1020. Energy management program — Expenditure of federal funds.

Any federal funds expended pursuant to §§ 4-3-1017 — 4-3-1019, shall only be obligated or expended in accordance with the program, terms, conditions and agreement under which such funds were received, unless specific authority to modify such program, terms, conditions or agreement has been received in writing from the granting authority.

History.

Acts 1983, ch. 429, § 27; 2007, ch. 72, § 6; T.C.A. § 4-3-1111.

Compiler's Notes.

Former § 4-3-1111 was transferred to this section by Acts 2007, ch. 72, § 6, without amendment, effective July 1, 2007.

4-3-1021. Monitoring and auditing of pharmacy benefits manager's compliance with state pharmacy benefits management contract.

(a) The department of finance and administration shall monitor, and cause to be audited by its qualified independent auditor, the pharmacy benefits manager's compliance with any state pharmacy benefits management contract. The commissioner of finance and administration, or the commissioner's designee, shall report, by July 1 of each year, on the pharmacy benefits manager's contract compliance to the speaker of the senate, the speaker of the house of representatives and the fiscal review committee.

(b) In order to comply with subsection (a), the department shall, after one (1) year of entering into or renewing any state pharmacy benefits management contract, annually perform a single risk assessment to determine those areas of the contracts that pose the greatest risk of noncompliance, fraud, waste and abuse. Upon completion of the risk assessment, the department shall incorporate the results of the risk assessment into its audit and monitoring plan. The department shall update the risk assessment when contract amendments result in additional risks of noncompliance, fraud, waste, or abuse. The department shall consult with the office of the comptroller of the treasury in determining the scope and extent of the audit and monitoring plan procedures. The department may submit the updated audit and monitoring plan, along with any audit or monitoring findings, to comply with the reporting requirement in subsection (a).

(c) The audit and monitoring plan shall address all state pharmacy benefits management contracts and be designed to examine source documentation whenever such documentation is available. The plan shall include, but not be limited to, a review of:

(1) Repricing of pharmacy claims at the drug level;

(2) Validation of the national drug code (NDC) usage;

(3) Appropriateness of the nationally recognized reference prices, or average wholesale price (AWP), in accordance with § 56-7-3104;

(4) Eligibility of beneficiaries for pharmacy claims paid;

(5) For pharmacy benefits contracts entered into or renewed on or after July 1, 2013, reconciliation of the pharmacy benefits manager's payments to pharmacies with the state's reimbursement to the pharmacy benefits manager;

(6) Confirmation that the pharmacy benefits manager's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one (1) or more pharmacies;

(7) Recalculation of discount and dispensing fee guarantees;

(8) Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the pharmacy benefits manager;

(9) Review of rebate contracts between the pharmacy benefits manager and five (5) drug manufacturers, to be selected by the benefits administration division of the department, and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;

(10) Comparison of total rebates collected by the PBM (pass-through

rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two (2) amounts;

(11) Monitor the activities of the pharmacy benefits manager to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services; and

(12) Consideration of other industry related risks to reduce the risk of financial losses due to fraud, waste and abuse.

(d) The department shall seek appropriate remedies for contract noncompliance and occurrences of fraud, waste or abuse that are discovered through monitoring or audits.

(e) The department shall have the authority to contract with a qualified independent auditor experienced in conducting pharmacy audits for auditing the pharmacy benefits manager's compliance with the contract. No contracted qualified independent auditor shall subcontract any part of the plan described in this section without the express written approval by the commissioner, or the commissioner's designee, and notification in writing to the comptroller of the treasury.

(f) This section shall apply to any state or local health insurance plan established under title 8, chapter 27.

History.
Acts 2013, ch. 408, § 1.

4-3-1022. Control of state portal — E-commerce payment activity assessment — Annual report — Liability for underlying obligation.

(a) The commissioner of finance and administration shall have the responsibility for the overall management of the state's portal, which shall include the following:

(1) The commissioner may authorize the assessment of additional charges on e-commerce payment activity to recover the costs of delivering e-commerce services, accepting electronic payments online, or both and shall be responsible for the development and administration of the policy guidelines governing such charges. The guidelines shall be consistent with federal laws and regulations governing electronic payment transactions. Such additional charges shall only be assessed when an optional method of payment is available. In no event shall such charges exceed the actual costs incurred to deliver e-commerce services and accept electronic payments online; and

(2) The review of the chief information officer's annual report concerning the operation of the state's portal.

(b) No person making a payment to the department by credit card, debit card, or other similar financial transaction card shall be relieved from liability for the underlying obligation, except to the extent that the department realizes final payment of the underlying obligation in cash or the equivalent. If final payment is not made by the card issuer or other guarantor of payment, then the underlying obligation shall survive, and the department shall retain all

remedies for enforcement that would have applied if the transaction had not occurred.

History.
Acts 2016, ch. 880, § 1.

PART 11

DEPARTMENT OF GENERAL SERVICES

4-3-1101. Creation.

There is hereby created the department of general services.

History.
Acts 1923, ch. 7, § 24; Shan. Supp., § 373a62; Code 1932, § 286; Acts 1933, ch. 92, § 1(12); 1937, ch. 33, §§ 15, 31; 1939, ch. 11, §§ 10, 16; C. Supp. 1950, § 255.15; Acts 1953, ch. 163, § 1; 1959, ch. 9, § 5; 1961, ch. 97, §§ 1, 5; 1972, ch. 543, §§ 3, 7; modified.

Compiler's Notes.
The department of general services, created by this section and § 4-3-101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Cross-References.
Creation of the department of general services, § 4-3-101.

4-3-1102. Commissioner.

The department of general services shall be under the charge and general supervision of the commissioner of general services.

History.
Acts 1923, ch. 7, § 24; Shan. Supp., § 373a62; Code 1932, § 286; Acts 1933, ch. 92, § 1(12); 1937, ch. 33, § 15; 1939, ch. 11, § 10; C. Supp. 1950, § 255.15; Acts 1953, ch. 163, § 1; 1959, ch. 9, § 5; 1961, ch. 97, §§ 2, 5; 1972, ch. 543, § 7; modified.

4-3-1103. General functions.

The department of general services shall coordinate and administer the state's purchases, personal properties, printing and motor vehicle facilities, surplus property, postal services and general public works services, and will provide for state agencies all additional support services that are not assigned by law to specific departments.

History.
Acts 1972, ch. 543, § 3; T.C.A., § 4-330; Acts 1981, ch. 499, § 4.

4-3-1104. Divisions — Creation.

(a) In order to discharge the functions of this department, there are hereby created within the department the following divisions:

(1) The food services management division;
(2) The motor vehicle management division;
(3) The photographic division;
(4) The printing division;
(5) The property services management division;

(6) The public works division; and

(7) The purchasing and administration division.

(b) The commissioner shall assign to the divisions the functions and duties imposed upon the department. The commissioner may combine, consolidate or abolish any of the divisions, or create such new divisions as are necessary to carry out the duties imposed upon the department, subject to the approval of the commissioner of finance and administration.

History.

Acts 1972, ch. 543, § 6; T.C.A., § 4-330; Acts 1981, ch. 364, §§ 4, 5; 1983, ch. 429, § 6; 2008, ch. 717, § 1; 2013, ch. 207, § 10.

Compiler's Notes.

Acts 1999, ch. 457, § 7, which was added as § 4-3-1012, provided for the transfer of the office of energy management, described in part 11 of this chapter, from the department of general services to the department of finance and administration, as to any functions related to the energy management program for state buildings and state-owned facilities. Section 7 of the act further provided that all staff, staff positions, equipment, supplies, property, funds and other resources of the functions referenced above shall be transferred to the department of finance and administration. Pursuant to section 7 of the act, energy management functions not related to state buildings and state-owned facilities shall remain with the department of general services.

Cross-References.

Reorganization of divisions, § 4-4-101.

Attorney General Opinions.

Copyright status of photographs taken by Tennessee's photographic services personnel, OAG 07-130, 2007 Tenn. AG LEXIS 130 (8/27/07).

4-3-1105. Powers and duties.

The department of general services has the power and is required to:

(1) Establish facilities for the testing of any materials, supplies or equipment purchased, or to be purchased, for this state or any of its departments, institutions or agencies, use the testing facilities of any other state department, institution or agency, and contract for testing services from any other private or public facility;

(2) Sell supplies, materials and equipment that are surplus, obsolete or unused;

(3) Have general care and supervision of all central storerooms operated by the state government, and establish and maintain such other central storerooms as may be necessary for the proper administration of title 12, chapter 3;

(4) Establish, maintain and conduct a central mail room, central postage metering, and centralized outgoing mail services for all state departments, institutions and agencies located at the state capitol, except those exempted by the commissioner;

(5) Prepare, publish and keep current a purchasing manual containing, among other things, the material provisions of title 12, chapter 3, the rules and regulations of the department and the procurement commission, and an explanation of the procedures followed in the handling and making of purchases and contracts under this part;

(6) Exercise, with the approval of the procurement commission, all the rights, powers and duties vested by title 12, chapter 5;

(7) Furnish, when requested, without cost, to the chief fiscal officer in each county and in each municipality of this state the current catalog or price listing of goods and materials, which the department may purchase for local

government, by virtue of § 12-3-1201;

(8) Supervise the maintenance of public buildings, including the state capitol and capitol annexes except as otherwise provided by § 4-8-101(a)(2), and of the capitol grounds, and the supplying of furniture and fixtures to these buildings;

(9) Study the use of state-owned automobiles by the state departments, offices and agencies, and establish rules and regulations for the housing, repair and operation of such automobiles;

(10) Make provisions for the centralization of such departmental services as mimeographing, duplicating, addressographing, copying, typesetting, copy preparation and binding, in order to save duplicate outlays for costly equipment used only part time;

(11) Supervise and maintain all public memorials and monuments erected or owned by the state, except where the supervision and maintenance is otherwise provided by law;

(12) Exercise general custodial care of all real property of the state;

(13) Provide for the supervision of the planning, preparing and serving of food including, but not limited to, the training and supervision of state food service employees;

(14) Exercise all functions previously exercised by the state educational agency for surplus property, as described in § 49-1-304;

(15) Supervise and regulate parking in the main state employee parking lot at the base of Capitol Hill in Nashville, as well as any other state employee parking lots now in existence or hereafter created throughout the state, except as provided in § 4-8-201, the parking lot adjacent to the Supreme Court Building in Nashville that is utilized by the personnel employed in the Supreme Court Building, and the underground parking facility adjacent to the War Memorial Building in Nashville. Such regulation shall include, but not be limited to, issuance of parking stickers to state employees, assessment of civil penalties in the manner provided in § 4-8-203, and removal of unauthorized vehicles. Such regulations shall not be applicable to tourists with out-of-state tags;

(16) Supervise the supplying of utilities to the state-owned buildings under the department's control and implement a system for monitoring and controlling the cost of such utilities;

(17) Provide state vehicle energy management life-cycle (operational and maintenance) cost analysis;

(18) Define and implement an energy efficiency code for state procurement of equipment and appliances;

(19) Administer the state employee van pool program;

(20) Prepare an annual report on the activities of the department concerning the definition and implementation of an energy efficiency code for state procurement of equipment and appliances. The department shall publish the report on the department's website and submit the report to the governor, the speakers of the senate and the house of representatives, the chairs of the government operations committees of the senate and the house of representatives, and the chairs of the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources

committee of the house of representatives, or their successor committees. The report shall include savings realized by the state as a result of the office's activities expressed in both units of energy saved and monetary cost-avoidance;

(21) Implement and administer the procurement of energy-efficient motor vehicles as provided in this part; and

(22) Impose a reasonable real estate transaction fee on all real estate transactions when the transaction is processed through the department of general services and to grant a fee waiver when deemed appropriate by the department. Said fee structure and waivers shall be subject to approval by the state building commission.

History.

Acts 1923, ch. 7, §§ 20, 21; Shan. Supp., §§ 373a57, 373a58; Code 1932, §§ 281, 282; Acts 1933, ch. 92, §§ 1(8), 1(9); C. Supp. 1950, §§ 255.31-255.42; Acts 1953, ch. 163, §§ 25, 29 (Williams, §§ 370.34, 370.38); modified; Acts 1959, ch. 9, § 5; 1961, ch. 97, § 5; 1972, ch. 543, § 5; 1972, ch. 630, § 1; 1973, ch. 307, § 1; 1978, ch. 524, § 1; T.C.A. (orig. ed.), § 4-331; T.C.A., § 4-330; Acts 1981, ch. 499, §§ 3, 5; 1983, ch. 214, § 4; 1983, ch. 429, §§ 8, 19; 2000, ch. 561, § 4; 2001, ch. 109, § 1; 2007, ch. 72, § 1; 2007, ch. 532, § 2; 2008, ch. 717, §§ 2, 3; 2009, ch. 106, §§ 1, 3; 2010, ch. 1062, § 1; 2011, ch. 295, § 19; 2012, ch. 604, § 3; 2013, ch. 236, § 3; 2013, ch. 454, § 26.

Compiler's Notes.

Former § 12-3-1001, formerly referred to in this section, was transferred to § 12-3-1201 by Acts 2013, ch. 403, § 68, effective July 1, 2013.

For an order transferring management and operation of the Division of Real Property Administration from the Department of Finance and Administration to the Department of General Services, see Executive Order No. 7 (September 30, 2011).

Acts 1981, ch. 503, § 11(43) (the general appropriations act) provided that: "Notwithstanding any other provision of law to the contrary, each state employee presently required to pay a commuting charge for the use of a state automobile shall be required, upon passage of this act, to pay the cost to the state of owning and operating such vehicle, in accordance with a reimbursement rate established by the commissioner of finance and administration, which shall be no less than the rate paid to reimburse general state employees for mileage pursuant to the comprehensive travel regulations."

Cross-References.

Rules and regulations regarding motor vehicles to be developed by department of safety, § 4-3-2007.

Security of state buildings and offices, division of protective services, § 4-3-2006.

4-3-1106. Special police commissions.

(a) The commissioner of general services shall be authorized to issue special police commissions to qualified state security personnel, who are full-time salaried employees of the state, to go armed or carry pistols while on active duty engaged in enforcing § 4-3-1105(8), (11), (12) and (15).

(b) Such commissions shall only be issued by the commissioner to those personnel who have satisfactorily completed appropriate training and who are certified as qualified, including mental and physical competency, to carry firearms by the Jerry F. Agee Tennessee law enforcement training academy or other similar agency.

History.

Acts 1977, ch. 209, § 1; impl. am. Acts 1979, ch. 93, § 1; T.C.A., § 4-330.

4-3-1107. Display of vehicle abuse hotline decal on vehicles managed by department of general services.

(a) The department of general services shall ensure that all vehicles purchased or leased with funds appropriated by the state and managed by the department of general services for the use of any department, office, or agency of the state display a vehicle abuse hotline decal. This subsection (a) shall apply only to vehicles displaying a governmental service registration plate of distinctive design issued under § 55-4-219; provided, that this subsection (a) shall not apply to vehicles used by state law enforcement agencies or the department of military.

(b) The decal shall contain a telephone number or website information through which complaints regarding potential misuse of a state vehicle, including speeding, texting and driving, or reckless driving, can be submitted.

(c) The department shall establish and maintain a vehicle abuse hotline and website through which complaints regarding potential misuse of a state vehicle can be submitted. The department shall also establish procedures for notifying departments, offices, and agencies of the state regarding any complaints received and for responding as necessary to those persons submitting complaints.

(d) The cost of implementation of this section shall be provided from within existing resources of the department.

History.
Acts 2018, ch. 982, § 1.

Compiler's Notes.
Acts 1999, ch. 457, § 7, which was added as § 4-3-1012, provided for the transfer of the office of energy management, described in part 11 of this chapter, from the department of general services to the department of finance and administration, as to any functions related to the energy management program for state buildings and state-owned facilities. Section 7 of the act further provided that all staff, staff positions, equipment, supplies, property, funds and other resources of the functions referenced above shall be transferred to the department of finance and administration. Pursuant to section 7 of the act, energy management functions not related to state buildings and state-owned facilities shall remain with the department of general services.

Former § 4-3-1107, concerning development and implementation of an energy management program, was transferred to § 4-3-1017 by Acts 2007, ch. 72, § 3, effective July 1, 2007.

The reference in subsection (a) to "55-4-223" was changed to "55-4-219" in light of the renumbering of that section pursuant to Acts 2018, ch. 1023, § 49.

4-3-1108. [Reserved.]

4-3-1109. Energy efficient state vehicles.

(a) The commissioner shall encourage the acquisition of energy-efficient and alternative fuel motor vehicles in the fleet of state vehicles. Each year, every effort should be made to achieve a target goal that one hundred percent (100%) of newly purchased passenger motor vehicles be energy-efficient or alternative fuel motor vehicles. The department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles procured for use in areas designated by the United States environmental protection agency (EPA) as nonattainment areas shall be all electric or hybrid-electric vehicles or vehicles powered by natural gas or propane; provided, that such vehicles and fueling infrastructure are available at the time of procurement and such

vehicles are purchased at competitive prices. In the event that such vehicles or fueling infrastructure is not available at the time of procurement, the department may instead meet this mandate by procuring compact fuel-efficient vehicles. In areas not designated by the EPA as nonattainment areas, the department shall ensure that at least twenty-five percent (25%) of newly purchased passenger motor vehicles are all electric or hybrid-electric vehicles, vehicles powered by natural gas or propane, or compact fuel-efficient vehicles; provided, that such vehicles are purchased at competitive prices.

(b)(1) Commencing June 30, 2013, the commissioner shall compile and maintain information on the nature of passenger motor vehicles that are owned and leased by the state, including, but not limited to:

(A) The number of passenger motor vehicles purchased during the fiscal year categorized by energy-efficiency; and

(B) The number of passenger motor vehicles owned as of June 30 of each year categorized by energy-efficiency.

(2) The commissioner shall file an annual report with the governor and the general assembly concerning such passenger motor vehicles. The report shall include at a minimum:

(A) Problems or concerns the state may have experienced in meeting the target goal set pursuant to subsection (a) relative to obtaining such energy-efficient motor vehicles;

(B) Any savings or increased expenditures to the state in the purchase of, as well as the operation and maintenance cost of, such motor vehicles;

(C) Plans for integrating energy-efficient motor vehicles identified in subdivisions (c)(1)(E) and (G) into the state passenger motor vehicle fleet;

(D) The volume of gasoline or diesel displaced by the usage of energy-efficient or alternative fuel vehicles; and

(E) The emissions reduction achieved by the usage of energy-efficient or alternative fuel vehicles.

(3) The information compiled and maintained pursuant to subdivisions (b)(1) and (2) shall be made accessible to the public on the department's website through a prominent link provided on the home page. In addition, the department shall submit an annual report containing the information compiled and maintained pursuant to subdivisions (b)(1) and (2) to the speaker of the senate and the speaker of the house of representatives and to the chairs of the committees concerning government operations and to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives.

(c) For purposes of this section, unless the context otherwise requires:

(1) "Energy-efficient motor vehicle" means a passenger motor vehicle that is:

(A) An alternative fuel vehicle as defined by the Energy Policy Act of 1992 (P.L. 102-486);

(B) A flexible fuel vehicle (FFV) utilizing ethanol, biodiesel, or any other commercially available alternative fuel approved by the United States department of energy;

(C) A hybrid-electric vehicle (HEV);

(D) A compact fuel-efficient vehicle, defined as a vehicle powered by unleaded gasoline that has a United States EPA estimated highway gasoline mileage rating of at least twenty-five miles per gallon (25 mpg) or greater for the model year purchased;

(E) An electric vehicle (EV);

(F) A vehicle powered by natural gas or propane; or

(G) A vehicle powered by ultra low sulfur diesel fuel that meets Bin 5, Tier II emission standards mandated by the EPA and that has an EPA estimated highway mileage rating of at least thirty miles per gallon (30 mpg) or greater for the model year purchased; and

(2) "Passenger motor vehicle" means a motor vehicle designed for carrying six (6) or fewer adult passengers and used for the transportation of persons; provided, that vans, including cargo vans, trucks, sport utility vehicles, and police pursuit vehicles shall not be considered passenger motor vehicles.

(d) For purchases of vehicles that are not passenger motor vehicles, including cargo vans, trucks, and sport utility vehicles, the department is encouraged to make reasonable efforts to achieve a target goal that at least five percent (5%) of newly purchased vehicles are vehicles powered by natural gas or propane; provided, that such vehicles and fueling infrastructure are available at the time of procurement and such vehicles are purchased at competitive prices.

(e) In order to facilitate the development of natural gas and propane fueling infrastructure, the department is authorized to participate in such pilot projects as may be necessary to ensure the availability of natural gas and propane fueling infrastructure throughout the interstate highway corridors in this state.

History.

Acts 2007, ch. 532, § 1; 2009, ch. 529, §§ 7-13; 2012, ch. 604, § 4; 2013, ch. 236, § 4; 2013, ch. 423, § 2; 2014, ch. 591, §§ 1, 2.

Compiler's Notes.

Former § 4-3-1109 (Acts 1983, ch. 429, § 9), concerning solar hot water heaters in the energy management program, was repealed by Acts 1999, ch. 457, § 4, effective June 17, 1999.

Acts 2009, ch. 529, § 1 provided that the act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009."

For the Preamble to the Tennessee Clean Energy Future Act of 2009, please refer to Acts 2009, ch. 529.

Acts 2009, ch. 529, § 30 provided that the provisions of the act, which amended subsection (a), added subdivision (b)(2)(C), amended subdivision (c)(1)(D), and added subdivisions (c)(1)(E)-(G), shall be subject to sunset review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in 2014.

Acts 2013, ch. 423, § 1 provided that the act, which amended this section, shall be known and may be cited as the "Energy Independence Act of 2013."

For the Preamble to the act concerning alternative fuel vehicles and fueling infrastructure, please refer to Acts 2013, ch. 423.

4-3-1110, 4-3-1111. [Reserved.]

4-3-1112. Rain forest materials and products — Study of purchases — Reduction or elimination.

The commissioner of general services is requested to conduct a study of the purchase by the state of any materials or products having their origin in raw materials derived from the endangered rain forest and how the state might reduce or eliminate the purchase of such materials or products. The commis-

sioner is also requested to purchase non-rain forest products if comparable in quality and cost to products derived from endangered rain forests.

History.
Acts 1992, ch. 1010, § 1.

4-3-1113. Lighting of Tennessee Tower.

The commissioner of general services shall, whenever practicable, provide the lighting patterns of the Tennessee Tower in Nashville for holidays and for appropriate messages from local nonprofit organizations and causes.

History.
Acts 1997, ch. 454, § 1.

4-3-1114. Emergency keyed lock boxes next to functioning elevators.

(a) Not later than November 28, 2005, each state-owned public building under the department's control, including the state capitol and capitol annexes, must ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72″) from the floor to the center of the box, be operable by a universal key, no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators. General standards for the design of such boxes shall be approved by the department of labor and workforce development not later than July 31, 2005; provided, however, that such standards must be consistent with all applicable building and life safety standards governing the facility.

(b) Failure to comply with this section shall be a Class C misdemeanor, and shall be punishable by a fine only of not more than two hundred fifty dollars ($250).

History.
Acts 2005, ch. 404, § 3.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

PART 12

DEPARTMENT OF HUMAN SERVICES

4-3-1201. Creation.

There is hereby created the department of human services.

History.
Acts 1937, ch. 33, § 1; 1939, ch. 11, § 1; C. Supp. 1950, § 255.1; Acts 1975, ch. 219, § 1; modified.

Compiler's Notes.
The department of human services, created by this section and § 4-3-101, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

For the transfer of certain children-related functions from the department of human services to the departments of health and children's services, Executive Order No. 6 (January 12, 1996).

Cross-References.
Creation of the department of human services, § 4-3-101.

Organization, powers and duties of department, title 71, ch. 1, part 1.

4-3-1202. Commissioner.

The department of human services shall be under the charge and general supervision of the commissioner of human services.

History.
Acts 1937, ch. 33, § 2; 1939, ch. 11, § 2; C. Supp. 1950, § 255.2; Acts 1975, ch. 219, § 2; modified.

4-3-1203. General functions of department.

The department of human services shall administer all functions to be established in this state under the federal Social Security Act (42 U.S.C. § 301 et seq.), except those functions that may be expressly delegated by either state statute or by federal law to other state departments, offices or agencies.

History.
Acts 1937, ch. 33, § 59; 1939, ch. 11, § 37; C. Supp. 1950, § 255.58 (Williams, § 255.62); Acts 1975, ch. 219, § 3; T.C.A. (orig. ed.), § 4-312.

Compiler's Notes.
For transfer of certain powers and duties to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

4-3-1204. Duties of commissioner.

(a)(1) The commissioner shall formulate rules and regulations:

(A) Fixing the minimum standards of service to be required of the local government authorities in carrying out the public welfare functions reposed in them;

(B) Providing for the termination of any grants-in-aid to any such local government authority whenever it becomes apparent that such minimum standards are not being complied with; and

(C) Requiring that the local governments shall bear such proportion of the total expenses as may be fixed by statute.

(2) The terms of subdivision (a)(1) shall apply only to the social security program.

(b) The commissioner is authorized to provide technical assistance to private employers pertaining to the implementation of day care services as an employee benefit under a cafeteria benefit plan. Such technical assistance shall be coordinated with appropriate state officials and private industry associations.

History.
Acts 1937, ch. 33, §§ 59, 60; 1939, ch. 11, §§ 37, 38; C. Supp. 1950, §§ 255.58, 255.59 (Williams, §§ 255.62, 255.63); Acts 1975, ch. 219, §§ 3, 4; T.C.A. (orig. ed.), §§ 4-312, 4-313; Acts 1988, ch. 801, § 1; 1996, ch. 1079, § 19.

Cross-References.
Commission on aging and disability, commissioner as member, § 71-2-104.

Organization, powers and duties of department, title 71, ch. 1, part 1.

4-3-1205. Definitions for §§ 4-3-1205 – 4-3-1208.

(a) As used in §§ 4-3-1205 – 4-3-1208, unless the context otherwise requires:

(1) "Analytical procedure" means a process consisting of evaluations of financial information made by a study of plausible relationships among both financial and nonfinancial data, and involving a comparison of recorded values with expectations developed by an auditor. "Analytical procedure" includes, but is not limited to, data analysis to identify subrecipients who claim maximum reimbursement when fluctuations are expected, and the unreasonable or inconsistent relationships between the subrecipients' ability to provide the level of services that the subrecipients claim for reimbursement;

(2) "Chairs" mean:

(A) The chair of the government operations committee of the house of representatives and the chair of the government operations committee of the senate;

(B) The chair of the health committee of the house of representatives and the chair of the health and welfare committee of the senate; and

(C) The chair of the finance, ways and means committee of the house of representatives and the chair of the finance, ways and means committee of the senate;

(3) "Department" means the department of human services;

(4) "Speakers" mean the speaker of the house of representatives and the speaker of the senate;

(5) "Sponsoring organization":

(A) Means a public or nonprofit private organization that is entirely responsible for the administration of a food program in:

(i) One (1) or more day care homes;

(ii) A child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(iii) Two (2) or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(iv) Any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes; and

(B) Includes an organization that is entirely responsible for administration of a food program in any combination of two (2) or more child care centers, at-risk afterschool care centers, adult day care centers, or outside-school-hours care centers; and

(6) "Subrecipient" means a nonfederal legal entity that receives a sub award from the department acting as a pass-through agency to carry out a federal program or grant. "Subrecipient" includes a sponsoring organization. "Subrecipient" does not include an individual that is a beneficiary of the program.

(b) Every three (3) months, the department shall submit to the chairs, the speakers, and the comptroller of the treasury a report summarizing each

announced and unannounced physical site visit conducted by the department during the subrecipient monitoring process. The report shall also contain advance notice of any announced and unannounced site visits planned for the following three-month period.

(c) Every three (3) months, the office of inspector general within the department of human services shall submit to the chairs, the speakers, and the comptroller of the treasury a report summarizing the results of any substantiated investigation concerning fraud, waste, and abuse regarding the child and adult care food program and summer food service program.

(d) The department's written reports submitted pursuant to subsections (b) and (c) shall be treated as confidential and shall not be open for public inspection.

(e) The department shall develop subrecipient monitoring plans utilizing analytical procedures. The subrecipient monitoring plans shall be submitted to the chairs, speakers, and comptroller of the treasury prior to October 1 of each year, consistent with state central procurement office policy and the applicable federal plan development and submission cycle.

(f) To the extent authorized by federal law, the department shall perform both announced and unannounced physical site visits during the subrecipient monitoring process. The department shall not provide any subrecipients with a description of the information sought by the department in anticipation of physical site visits conducted by the department during the subrecipient monitoring process.

History.
Acts 2016, ch. 798, § 1; 2019, ch. 71, § 2.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-3-1206. Performance bond — Requirements — Exceptions.

(a) To the extent authorized by federal law, the department shall require a sponsoring organization applying to participate in any food program administered through the department to obtain and maintain a performance bond from a company designated in the United States Treasury Circular 570 as certified to issue bonds for the child and adult care food program and the summer food service program in an amount specified by the department.

(b) The bond amount shall be reviewed and adjusted to reflect actual enrollment or reimbursement as needed.

(c) A sponsoring organization may request relief from the bonding requirement once it can demonstrate that it has accumulated three (3) consecutive years of successful administrative and financial history by submitting a written request to the department.

History.
Acts 2016, ch. 798, § 2.

4-3-1207. Background checks.

During the application process, and at any time during a sponsoring organization's or subrecipient's participation in a food program administered by the department, to the extent authorized by federal law the department

shall conduct background checks on each applicant of the subrecipient or sponsoring organization, to determine if any applicant has a criminal history that would make the organization ineligible to participate in a food program administered by the department. Criminal history that meets this criterion includes a criminal conviction in the seven (7) years preceding the date of application or the date of background check that indicates a lack of business integrity including, but not limited to, any crime involving dishonesty.

History.
Acts 2016, ch. 798, § 3.

4-3-1208. Authority to obtain state and national history background checks on employees and contractors with access to individuals with disabilities.

(a) The department is authorized, in accordance with 34 U.S.C. § 40102(a)(1), to obtain state and national criminal history background checks and investigations performed by the Tennessee bureau of investigation and the federal bureau of investigation on employees and contractors of the department of human services division of rehabilitation services who are likely to have access to individuals with disabilities.

(b) An employee of the department of human services division of rehabilitation services who is likely to have access to individuals with disabilities must:

(1) Agree to the release of all investigative records to the state for the purpose of verifying criminal history information; and

(2) Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the Tennessee bureau of investigation and a national criminal history background check and investigation to be conducted by the federal bureau of investigation.

(c) A person who is contracted with the department of human services division of rehabilitation services or employed by or subcontracted with a company that is contracted with the department of human services division of rehabilitation services who is likely to have access to individuals with disabilities must:

(1) Agree to the release of all investigative records to their employer or the state for the purpose of verifying criminal history information; and

(2)(A) Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the Tennessee bureau of investigation and a national criminal history background check and investigation to be conducted by the federal bureau of investigation; or

(B) Release information for a criminal background investigation by a state-licensed private investigation company.

(d) The department may require a person or entity contracting with the department to pay the costs associated with the background investigations of all employees of the contractor, which may be a condition of the contract with the department. If the background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, the payment of the costs shall be made in accordance with § 38-6-103.

(e) The department is authorized to promulgate rules regarding the implementation and use of the background checks and investigations conducted pursuant to this section. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 2019, ch. 71, § 1.

PART 13

DEPARTMENT OF COMMERCE AND INSURANCE

4-3-1301. Creation.

There is hereby created the department of commerce and insurance.

History.
Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; C. Supp. 1950, § 255.1; Acts 1971, ch. 137, § 1; modified; Acts 1983, ch. 311, § 5.

Compiler's Notes.
The department of commerce and insurance, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Cross-References.
Creation of the department of commerce and insurance, § 4-3-101.

Department of commerce and insurance, organization, powers and duties, title 56, ch. 1.

Prevention and investigation of fires, duties, title 68, ch. 102.

4-3-1302. Commissioner.

The department of commerce and insurance shall be under the charge and general supervision of the commissioner of commerce and insurance.

History.
Acts 1923, ch. 7, § 2; Shan. Supp. § 373a32; Code 1932, § 257; Acts 1937, ch. 33, § 2; C. Supp. 1950, § 255.2; Acts 1971, ch. 137, § 2; modified; Acts 1983, ch. 311, § 6.

Cross-References.
Accounting for fees, §§ 8-22-118 — 8-22-121.

4-3-1303. Divisions — Creation.

The department of commerce and insurance shall be organized under three (3) divisions, as follows:

(1) The division of commerce and insurance;
(2) The division of fire prevention; and
(3) The division of regulatory boards.

History.
Acts 1923, ch. 7, § 51; Shan. Supp. § 373a111; Code 1932, § 329; Acts 1937, ch. 33, § 67; mod. C. Supp. 1950, § 329 (Williams, §§ 255.70, 329); impl. am. Acts 1973, ch. 294, § 9; impl. am. Acts 1979, ch. 28, § 2; T.C.A. (orig. ed.), § 4-315; Acts 1983, ch. 311, § 7; 2019, ch. 459, § 1.

Compiler's Notes.
For transfer of the division of consumer affairs from the department of agriculture to the department of commerce and insurance, see Executive Order No. 33 (February 11, 1983).

Acts 2019, ch. 459, § 55 provided that the division of consumer affairs in the department of commerce and insurance shall coordinate with the attorney general and reporter to transfer all documents, information, systems, and other material deemed relevant to the operation of the division of consumer affairs of the office of the attorney general and reporter.

Cross-References.
Director of securities, § 48-1-115.
Reorganization of divisions, § 4-4-101.

Law Reviews.
Procedure in Contesting Life Insurance Policies (Aubrey F. Folts), 15 Tenn. L. Rev. 780 (1939).

4-3-1304. Administration of regulatory boards — Notification of vacancy — Termination of regulatory board — Exemption from licensure requirements.

(a) Except as provided in § 68-115-103 relative to the Tennessee athletic commission, all state regulatory boards are attached to the division of regulatory boards, which is authorized to administer all the administrative functions and duties of the regulatory boards, except those discretionary regulatory duties and powers vested by law in the board members. The regulatory boards attached to the division are as follows:

(1) Auctioneer commission;
(2) Board for licensing general contractors;
(3) Board of accountancy;
(4) Board of court reporting;
(5) Board of examiners for architects and engineers;
(6) Board of examiners for land surveyors;
(7) Board of funeral directors and embalmers;
(8) Commission on firefighting personnel standards and education;
(9) Motor vehicle commission;
(10) Personnel recruiting services board;
(11) [Deleted by 2021 amendment.]
(12) Real estate commission;
(13) State board of cosmetology and barber examiners; and
(14) All other boards, commissions and agencies created to regulate professions, vocations and avocations in this state, except that there shall not be included the Tennessee athletic commission, the board of healing arts, the board for licensing hospitals, the stream pollution control board, the pest control board, the board of examiners for registered professional sanitarians, the board of examiners of miners or the board of law examiners.

(b) Each regulatory board incurring a vacancy shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs. All vacancies on the state regulatory boards attached to the division of regulatory boards shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and such board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, such board shall report to the house of representatives and senate government operations committees why such vacancies have not been filled.

(c) If more than one-half (½) of the positions on any state regulatory board are vacant for more than one hundred eighty (180) consecutive days, such state regulatory board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. If a state regulatory board is terminated

pursuant to this subsection (c) it shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or reestablishing a state regulatory board.

(d)(1) As used in this subsection (d):

(A) "License" means a permit, approval, registration, or certificate issued by a state agency and held by an individual person. The term "license" as used in this subsection (d) excludes licenses issued to business entities, firms, physical locations, and supervisory personnel;

(B) "Member of the armed forces" means a member of the United States armed forces or a member of a reserve or Tennessee national guard unit who is in, or was called into, active service or active military service of the United States, as defined in § 58-1-102; and

(C) "State agency" means a state board, agency, commission, or any other entity attached to the division of regulatory boards, as listed in subsection (a).

(2) Notwithstanding any other exemption from licensure requirements, the following persons may engage in the practice of an occupation or profession regulated by a state agency under titles 16, 46, 55, 62, and 68 without being licensed pursuant to that title:

(A) A member of the armed forces while the person is stationed within this state if:

(i) The person holds a valid license to practice the regulated occupation or profession issued by another state or jurisdiction having reasonably similar standards for licensure;

(ii) The license is current and the person is in good standing in the state or jurisdiction of licensure;

(iii) The person agrees in writing to subject themselves to the jurisdiction of the state agency with respect to harms or violations of statutes and rules; and

(iv) The person provides notice by registering with the state agency administering the profession in which the person is licensed in the other jurisdiction to practice; and

(B) The spouse of a member of the armed forces while the member is stationed in this state if:

(i) The spouse holds a valid license to practice the regulated occupation or profession issued by another state or jurisdiction having reasonably similar standards for licensure;

(ii) The license is current and the spouse is in good standing in the state or jurisdiction of licensure;

(iii) The spouse agrees in writing to subject themselves to the jurisdiction of the state agency with respect to harms or violations of statutes and rules; and

(iv) The spouse provides notice by registering with the state agency administering the profession in which the person is licensed in the other jurisdiction to practice.

(3) A person who holds a valid license to practice an occupation or profession in another state or jurisdiction and practices in this state

pursuant to this subsection (d) must apply for the license in this state either prior to its expiration in the other state or jurisdiction or within one (1) year of the date the person began practicing in this state, whichever occurs first.

(e) The commissioner and each regulatory board shall, upon application for certification or licensure, accept military education, training, or experience completed by a person toward the qualifications to receive a license or certification if such education, training, or experience is determined by the commissioner or board to be substantially equivalent to the standards of this state.

(f)(1) Notwithstanding any other law to the contrary, the license, certification or permit issued by a board, commission or agency attached to the division of regulatory boards of any member of the national guard or a reserve component of the armed forces of the United States called to active duty that expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:

(A) Payment of late fees or other penalties;

(B) Obtaining continuing education credits when:

(i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the appropriate regulatory board; or

(ii) The person performs the licensed or certified occupation as part of such person's military duties and provides documentation to the appropriate regulatory board; or

(C) Performing any other act typically required for the renewal of the license or certification.

(2) The license, certification or permit shall be eligible for renewal pursuant to subdivision (f)(1) for six (6) months from the person's release from active duty.

(3) Any person described in subdivision (f)(1) shall provide the regulatory board which issued the license, permit or certification such supporting documentation evidencing activation as may be required by the regulatory board prior to the renewal of any license pursuant to this subsection (f).

History.

Acts 1959, ch. 9, § 15; impl. am. Acts 1967, ch. 110, § 3; impl. am. Acts 1967, ch. 184, § 1; impl. am. Acts 1967, ch. 335, § 4; impl. am. Acts 1967, ch. 207, § 3; Acts 1971, ch. 81, § 1; 1971, ch. 137, § 3; 1976, ch. 623, § 1; 1976, ch. 706, § 4; impl. am. Acts 1978, ch. 844, § 4; Acts 1978, ch. 906, § 4; 1978, ch. 924, § 1; 1979, ch. 28, § 4; T.C.A., § 4-315; Acts 1981, ch. 489, § 2; 1984, ch. 865, § 22; 1999, ch. 252, § 8(b); 2000, ch. 835, § 1; 2007, ch. 407, § 1; 2008, ch. 1149, §§ 4, 5; 2011, ch. 230, § 2; 2013, ch. 122, §§ 2, 4, 6; 2014, ch. 964, § 1; 2015, ch. 355, § 1; 2019, ch. 195, § 1; 2021, ch. 294, § 10.

Compiler's Notes.

Acts 2000, ch. 835, § 7, provided that this act shall not change any procedure, manner, or time that members of the Tennessee motor vehicle commission who are selected from a list of qualified persons submitted by motor vehicle manufacturers licensed in Tennessee or their consumer replacements are appointed pursuant to § 55-17-103.

Acts 2013, ch. 122, § 7 provided that each entity subject to the act shall promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Notwithstanding § 4-5-208, each entity subject to the act is authorized to promulgate emergency rules to implement the act.

Acts 2015, ch. 355, § 3 provided that all records of the Tennessee Board of Court Reporting in the possession of the Administrative Office of the Courts on July 1, 2015, shall be transferred to and remain in the custody of the Division of Regulatory Boards in the Department of Commerce and Insurance.

Acts 2015, ch. 355, § 4 provided The Tennes-

see Board of Court Reporting is directed to promulgate rules to effectuate the purposes of this act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the Preamble the act concerning transfer of administration of the Tennessee Board of Court Reporting to the Division of Regulatory Boards in the Department of Commerce, see Acts 2015, ch. 355.

Acts 2019, ch. 195, § 3 provided that the commissioner of commerce and insurance and the commissioner of health shall promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2019, ch. 195, § 4 provided that the act, which amended this section, shall apply to all persons who make application for an exemption from licensure under the act.

Amendments.

The 2021 amendment deleted (a)(11) which read: "Private investigation and polygraph commission;".

Effective Dates.

Acts 2021, ch. 294, § 37. July 1, 2021; for purposes of promulgating rules, the act took effect April 30, 2021.

Cross-References.

Division of regulatory boards, title 56, ch. 1, part 3.

Attorney General Opinions.

Applicability to terminated board or commission, OAG 98-045, 1998 Tenn. AG LEXIS 45 (2/17/98).

T.C.A. § 62-1-105 gives the board of accountancy the sole authority to hire and terminate its executive director and any other member of its staff requiring professional qualifications, OAG 04-060, 2004 Tenn. AG LEXIS 58 (4/08/04).

NOTES TO DECISIONS

1. Residence of Attached Boards and Commissions.

Situs and official residence of Tennessee real estate commission attached to this department was Davidson County and suit against commission could only be maintained in that county. Chamberlain v. State, 215 Tenn. 565, 387 S.W.2d 816, 1965 Tenn. LEXIS 634 (1965).

The situs of the Tennessee real estate commission from which all official acts originate is Davidson County and certiorari to review the acts of the commission can only be had in the courts of that county. Tennessee Real Estate Com. v. Potts, 221 Tenn. 585, 428 S.W.2d 794, 1968 Tenn. LEXIS 488 (1968).

4-3-1305. Safeguards for retirement living facilities guaranteeing continued medical care and services — Regulations — Actions.

(a) The department of commerce and insurance has the authority to determine whether any facility that has guaranteed or guarantees to provide medical coverage for its residents has adequate safeguards in place to ensure that such medical care will be provided as guaranteed. If the department determines that adequate safeguards have not been established, the department has the authority to require that such provider place a sufficient amount of funds in escrow to ensure that such medical care will be provided. The escrow account shall be established in a manner authorized by the department.

(b) If the department requires an escrow account for a present provider, then prior to the expansion of any proposed facilities for which continuing care agreements are to be signed, the provider must establish a comparable escrow account and deposit a specified amount into such account as determined by the department as funds are contributed by residents for such facilities. This section shall apply only to retirement living facilities that offer or propose to offer continuing life care services to individuals for a fee.

(c)(1) The commissioner may from time to time make, promulgate, amend and rescind such rules as are necessary to carry out this section.

(2) All rules provided for in this part shall be adopted, promulgated and contested as provided in the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(d)(1) Whenever it appears to the commissioner that any facility that has guaranteed or guarantees to provide medical coverage for its residents has not established adequate safeguards to ensure that such medical care will be provided as guaranteed, the commissioner may, in the commissioner's discretion, bring an action in the chancery court in any county in this state to enforce compliance with this part or any rule or order under this part.

(2) Upon a proper showing, a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement or other proper equitable relief shall be granted, and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(3) The court may not require the commissioner to post a bond.

History.
Acts 1987, ch. 341, § 1; 1989, ch. 301, § 1.

Law Reviews.
Continuing Care Laws of Arkansas, Tennessee and North Carolina (Harry E. Groves), 20 Mem. St. U. L. Rev. 159 (1990).

4-3-1306. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, division, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies, and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies, and guidelines.

(b) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall establish and maintain a link or links on the entity's website to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or adminis-

tratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

History.
Acts 2008, ch. 1070, § 8; 2012, ch. 952, § 5.

Compiler's Notes.
Acts 2008, ch. 1070, § 13 provided that each entity subject to the act shall promulgate rules to effectuate the purposes of the act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 14

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

4-3-1401. Short title.

The title of this part is, and may be cited as, the "Tennessee Workforce Development Act of 1999."

History.
Acts 1999, ch. 520, § 2.

Compiler's Notes.
Former § 4-3-1401 (Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; C. Supp. 1950, § 255), concerning creation of the department of labor, was repealed by Acts 1999, ch. 520, §§ 2, 22, effective June 17, 1999.

Law Reviews.
Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

4-3-1402. Purpose and intent.

(a) The purpose of this part is to:

(1) Further the implementation of the federal Workforce Innovation and Opportunity Act (29 U.S.C. § 3101 et seq.);

(2) Reduce duplicative efforts and fully utilize resources by creating an integrated, coordinated, simplified system of workforce development in the

state through the consolidation or collaboration of job training, employment, employment-related educational programs, health and safety and unemployment insurance programs in the state; and

(3) Foster public and private sector partnerships designed to provide employment-related services to citizens and employers of the state. It is not the intent of this part to expand or authorize contracting services beyond that authorized under the laws of this state.

(b) References to federal Workforce Investment Act of 1998 are deemed references to the federal Workforce Innovation and Opportunity Act.

(c) References to the workforce development program are deemed references to the federal Workforce Innovation and Opportunity Act.

History.
Acts 1999, ch. 520, § 3; 2015, ch. 57, § 1; 2016, ch. 599, §§ 2, 3.

Compiler's Notes.
Former § 4-3-1402 (Acts 1923, ch. 7, § 2; Shan. Supp., § 373a32; Code 1932, § 257; Acts 1937, ch. 33, § 2; C. Supp. 1950, § 255.2; modified), concerning the commissioner of the department of labor, was repealed by Acts 1999, ch. 520, §§ 3, 22, effective June 17, 1999.

4-3-1403. Creation of department.

There is hereby created the department of labor and workforce development.

History.
Acts 1999, ch. 520, § 4.

Compiler's Notes.
The department of labor and workforce development, created by this section and § 4-3-101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Former § 4-3-1403, concerning the powers and duties of the department, was transferred to § 4-3-1405(h) in 1999.

Cross-References.
Creation of the department of labor and workforce development, § 4-3-101.

4-3-1404. Purpose and goals of the department.

(a) Through the department of labor and workforce development, Tennessee state government, in cooperation with business and industry, will strive to provide integrated, effective, efficient delivery of employment related services and training, in compliance with the federal Workforce Innovation and Opportunity Act (29 U.S.C. § 3101 et seq.), so the state can increase the occupational skill attainment of its workforce and, as a result, improve the quality of the workforce, further the reduction of welfare dependency and enhance the state's productivity and competitiveness in the global economy. The department shall strive to meet the needs of business and industry in this state for the development of a highly skilled and productive workforce.

(b) The department shall strive to meet the needs of employees, unemployed persons, and persons making the transition into the workplace through education, skills training, labor market information, and an efficient unemployment insurance program to enhance their employability, earnings and standard of living while ensuring that employees have a safe, healthy workplace. These services for employees shall focus, whenever possible, on assisting employees to obtain jobs of their choice that provide health insurance, job security and the opportunity for self-sufficiency. The department shall serve as a model employer relative to safety and working conditions in the workplace and in the training and retraining of employees to meet the

changes in the work environment. The departments of labor and workforce development and economic and community development shall collaborate relative to job creation, attraction and expansion of business and industry. The department of labor and workforce development shall work to continuously improve the management and coordination of employment-related services for the benefit of business and industry and Tennessee's workforce and shall ensure the taxpayers of this state that revenues for workforce development and unemployment insurance programs are spent effectively and efficiently.

History.
Acts 1999, ch. 520, § 5; 2015, ch. 57, § 2; 2016, ch. 599, § 4.

Compiler's Notes.
Former § 4-3-1404, concerning notice regarding health insurance, was transferred to § 4-3-1414 in 1999.

4-3-1405. Powers of the department.

(a) The department of labor and workforce development is designated as the department of this state for the implementation and administration of the following federal programs relating to workforce development, including, but not limited to, the:

(1) Federal Workforce Innovation and Opportunity Act (29 U.S.C. § 3101 et seq.);

(2) Wagner-Peyser Act (29 U.S.C. § 49 et seq.); and

(3) The former Job Training Partnership Act (29 U.S.C. § 1501 et seq.) [repealed].

(b) The department shall cooperate with all authorities of the United States having powers or duties under the acts of congress mentioned in subsection (a), and shall do and perform all things necessary to secure to this state the benefits of such acts.

(c) Except for the supervisory responsibilities of the department of commerce and insurance, the department of labor and workforce development has full and complete charge of the administration of the Employment Security Law, compiled in title 50, chapter 7, and the state employment service for this state and has the administration of such other functions exercised by the department of employment security or the department of labor, or both, prior to June 17, 1999.

(d) The department of labor and workforce development has full and complete charge of the adult basic education authorized by the Tennessee Rules, Regulations and Minimum Standards of the state board of education and administered by the department of education prior to June 17, 1999.

(e) The department of labor and workforce development shall coordinate the collaborative and cooperative activities and functions of other departments and state agencies and commissions, including, but not limited to, the department of education, the department of human services, the department of economic and community development, and the Tennessee higher education system, including colleges of applied technology and two-year post secondary institutions, to reduce duplication among employment and employment-related training activities in the state, and to maximize Tennessee's efforts to increase the skills of its workforce, foster economic growth through job

placement and training services and provide high quality services to its customers including employees, families, business and industry, and particularly those individuals who are economically disadvantaged, dislocated workers, and others with substantial barriers to employment. The department of human services has the responsibility for contracting for the activities required of Families First participants pursuant to § 71-3-104.

(f) The department of labor and workforce development may do all acts and functions necessary or proper to carry out the powers expressly granted under this part, including, but not limited to, entering into agreements or contracts with local governmental units or corporations to provide services that assist the department in carrying out the duties imposed by this part or elsewhere in this code. It is not the intent of this part to create new state authority or to expand any existing authority to contract for services with private entities.

(g) The department of labor and workforce development has authority over such other functions generally, as the governor may lodge with the department by executive order duly signed and filed with the secretary of state.

(h) The department of labor and workforce development has the power to:

(1) Collect information on the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral prosperity;

(2) Visit and inspect, as often as necessary, during reasonable hours all shops, factories and mercantile establishments and other places where workers are employed and to cause the law to be enforced therein;

(3) Inspect the sanitary conditions, system of sewerage, system of heating, lighting and ventilation of rooms where persons are employed at labor and the means of exit in case of fire, or other disaster within or connected with shops and factories;

(4) Examine the machinery in and about workshops and factories, to see that it is not located so as to be dangerous to employees when engaged in their ordinary duties;

(5) Declare and prescribe what safety devices, safeguards or other means of protection are well adapted to render employees or places of employment safe;

(6) Order such reasonable changes in the construction, maintenance and repair of places of employment as shall render them safe;

(7) Require the performance of any act necessary for the protection of life, health and safety of employees;

(8) Collect and compile reliable data that, if disseminated, would tend to the development of the state by inducing population and capital to come within its borders; and

(9) Collect and compile accurate listings of employers who do not comply with § 50-6-405.

(i) Activities associated with Title V of the federal Older Americans Act of 1965 (42 U.S.C. § 3001 et seq.) shall be administered by the department. Funding to community providers pursuant to a grant or contract with the commission on aging and disability in effect on June 30, 2003, shall continue so long as federal funding continues and each provider continues to meet program goals and requirements and complies with any applicable audit and financial accountability laws.

(j)(1) To the extent permitted by any federal law or rule, regulation, guideline, or advisory opinion of the internal revenue service, the department shall accept and process any IRS Form 8850, or any successor to such form, that is submitted with electronic signatures in the same manner as the department accepts such forms when submitted with physical signatures if such form is submitted to the department by mail, facsimile, or e-mail copy.

(2) For purposes of this subsection (j), "electronic signatures" includes a physical printout of an electronically signed IRS Form 8850 indicating that the signature field is "signed electronically".

History.
Acts 1923, ch. 7, § 55; Shan. Supp., § 373a118; mod. Code 1932, § 335; Acts 1935, ch. 165, §§ 1, 2; mod. C. Supp. 1950, § 335 (Williams, §§ 335, 5347.1, 5347.2); T.C.A. (orig. ed.), § 4-316; modified; Acts 1986, ch. 844, §§ 4, 7; 1999, ch. 520, §§ 6, 23; T.C.A., § 4-3-1403; Acts 2003, ch. 311, § 2; 2012, ch. 923, § 1; 2013, ch. 473, § 8; 2015, ch. 57, § 3; 2015, ch. 341, § 1; 2016, ch. 599, § 5; 2017, ch. 461, § 3.

Compiler's Notes.
The former Job Training Partnership Act, referred to in this section, formerly compiled in 29 U.S.C. § 1501 et seq., was repealed by Act Aug. 7, 1998, P.L. 105-220, title I, subtitle F, § 199(b)(2), 112 Stat. 1059, effective on July 1, 2000.

Cross-References.
Employers and employees, title 50.

4-3-1406. Commissioner.

The department of labor and workforce development shall be under the charge and general supervision of the commissioner of labor and workforce development.

History.
Acts 1999, ch. 520, § 7.

4-3-1407. Powers and duties of commissioner.

The commissioner of labor and workforce development or the commissioner's designee has the following powers and duties, in addition to such other powers and duties as may be specifically provided by law in this title, transferred by this part or as otherwise provided by law:

(1) Develop and implement activities and programs that foster the continued enhancement of Tennessee's workforce;

(2) Ensure the maintenance of a fair, equitable and fully funded unemployment insurance program; and

(3) Be responsible for the administration of a workforce development system that protects the life, health and safety of Tennessee's workforce.

History.
Acts 1999, ch. 520, § 8.

4-3-1408. Divisions — Creation — Office of administrator.

(a) In addition to the creation of the division of the Tennessee state employment service within the department of labor and workforce development as provided in § 50-7-601, there are created within the department, the following divisions:

(1) The division of employment security;

(2) The bureau of workers' compensation; and

(3) The division of occupational safety and health.

(b) The division of employment security and the division of occupational health and safety shall be under the supervision and charge of the commissioner of labor and workforce development, and shall be separate administrative entities for programs, personnel, and budgets. The bureau of workers' compensation shall also be a separate administrative entity for programs, personnel, and budgets; the supervision and charge of the division shall be in accordance with § 4-3-1409.

(c)(1)(A) The office of administrator is hereby created for each division created pursuant to subdivisions (a)(1)-(3). The administrator shall have the general administrative authority of the division.

(B) Except as otherwise provided in this chapter, the administrator of the division of employment security is responsible, to the greatest extent possible, for administering, implementing, and enforcing title 50, chapter 7, and any rules or regulations promulgated in accordance with such chapter that are within the purview of employment security, but not including WOTC alien certification, veterans' programs and the Tennessee state employment service. The administrator shall have a minimum of five (5) years' credible experience in the field of employment security and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning employment security.

(C) The administrator of the bureau of workers' compensation is responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 6, and any rules or regulations promulgated in accordance with such chapter.

(D) The administrator of the division of occupational safety and health shall be responsible for administering, implementing, and enforcing all of the provisions enacted into law and compiled in title 50, chapter 3, and any rules or regulations promulgated in accordance with such chapter. The administrator shall have a minimum of five (5) years' credible experience in the field of occupational safety and health and shall have a comprehensive knowledge of and experience in the operation and programs of the division. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning occupational safety and health.

(2) In addition to other duties, each administrator is responsible for preparing and submitting to the commissioner of labor and workforce development an annual budget for the division the administrator heads.

(3) The administrators of the division of employment security and the division of occupational safety and health shall be appointed by the commissioner of labor and workforce development for a term of four (4) years. The first appointment shall be made July 1, 1999, or as soon as practical thereafter. The four-year terms shall begin on July 1 and end on June 30 of appropriate years. The commissioner of labor and workforce development has the authority to remove an administrator only for nonperformance of

duties and responsibilities. If removed, a vacancy shall exist in the office of the administrator. A vacancy in the office shall be filled for the unexpired term with a person meeting the requirements applicable to the original appointee.

(4) The administrator of the bureau of workers' compensation shall be appointed in the manner provided in § 4-3-1409.

(d) The transfer of the functions and activities of the various departments and programs to the department of labor and workforce development shall not, because of the transfer, result in any preferred service employee suffering loss of employment, compensation, benefits, or state service status. Such rights, benefits, and compensation shall continue without any impairment, interruption, or diminution; provided, that the department may engage in disciplinary actions or reductions in force as provided for by law. The commissioner of human resources is authorized to enforce this section and shall determine whenever the rights, benefits, and compensation are impaired, interrupted, or diminished. Any employee aggrieved by any impairment in violation of this section shall have the right to seek redress through the grievance procedure established in § 8-30-318.

History.

Acts 1999, ch. 520, § 9; 2012, ch. 800, § 49; 2013, ch. 289, § 1; 2015, ch. 341, § 16.

Compiler's Notes.

The bureau of workers' compensation, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Acts 2012, ch. 800, § 1 provided that the act, which amended subsection (c), shall be known and cited as the "Tennessee Excellence, Accountability, and Management (T.E.A.M.) Act of 2012."

Acts 2013, ch. 289, § 103 provided that the act, which amended this section, shall be known and may be cited as the "Workers' Compensation Reform Act of 2013."

Attorney General Opinions.

The administrator of the division of employment security has control of the funds, budget, and personnel provided for the employment security programs, OAG 01-093, 2001 Tenn. AG LEXIS 84 (6/4/01).

4-3-1409. Independence of the bureau of workers' compensation — Bureau under the charge and general supervision of the administrator of the bureau — Powers and duties of administrator —Appointment of administrator.

(a) In recognition of Tennessee's endeavor to reform the workers' compensation law in a manner designed to ensure the health and safety of Tennessee workers and to promote Tennessee as an attractive destination for business, the general assembly has determined that the independence of the bureau of workers' compensation is paramount. The bureau of workers' compensation shall be an autonomous unit that shall be attached to the department of labor and workforce development for administrative matters only.

(b)(1) The bureau of workers' compensation shall be under the charge and general supervision of the administrator.

(2) The administrator or the administrator's designee has the following powers and duties, in addition to other powers and duties specifically provided by law:

(A) Development and maintenance of an organizational structure to

ensure fair, equitable, expeditious, and efficient administration of the workers' compensation law; and

(B) Responsibility for the administration of a workers' compensation system that protects the life, health, and safety of Tennessee's workforce and ensures the continued viability of Tennessee's business environment.

(c)(1) The administrator of the bureau of workers' compensation shall be appointed by the governor for a term of six (6) years. No administrator shall serve more than two (2) full terms, and service of more than half of a six-year term shall constitute service of one (1) full term; provided, that any administrator appointed to serve less than a full term to fill a vacancy created by the removal or resignation of the previous administrator shall be eligible to serve an additional two (2) full terms. The first appointment shall be made July 1, 2013, or as soon as practical thereafter. The first six-year term shall begin on July 1, 2013, and end on June 30, 2019. Thereafter, all terms shall begin on July 1 and end, six (6) years later, on June 30 of the following years. The governor has the authority to remove the administrator for nonperformance of duties and responsibilities or for cause. If the administrator is removed or resigns, a vacancy shall exist in the office, which shall be filled for the unexpired term by a person meeting the requirements of subdivision (c)(2).

(2) The administrator shall have a minimum of seven (7) years' credible experience in the field of workers' compensation and shall have a comprehensive knowledge of and experience in the operation and programs of the workers' compensation industry. The administrator shall be recognized by the representatives of the business and labor communities as a person of good standing and reputation in matters concerning workers' compensation.

History.
Acts 2013, ch. 289, § 2; 2015, ch. 341, § 16.

Code Commission Notes. Former § 4-3-1409 (Acts 1999, ch. 520, § 10), concerning transfer of programs and personnel, offices, equipment, supplies, property, facilities, funds and other resources, was deleted as obsolete by the code commission in 2005.

Compiler's Notes.
Acts 2013, ch. 289, § 103 provided that the act, which enacted this section, shall be known and may be cited as the "Workers' Compensation Reform Act of 2013."

4-3-1410. Funds.

(a) The department of labor and workforce development, through its commissioner, has the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or other basis, with respect to any programs and/or responsibilities outlined in this part or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds for the administration of employment security law under title 50, chapter 7, or the department of finance and administration.

(b) All funds received by the department of labor and workforce development for the purpose or administration of the state unemployment insurance

program, the state employment service, workers' compensation and the Occupational Safety and Health Act of 1972, compiled in title 50, chapter 3, shall have their separate identities maintained and shall be expended only for the intended purpose.

History.
Acts 1999, ch. 520, § 11.

4-3-1411. Orders, rules and regulations, decisions and policies.

The department of labor and workforce development, through its commissioner, has the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred by chapter 520 of the Public Acts of 1999, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions transferred by chapter 520 of the Public Acts of 1999.

History.
Acts 1999, ch. 520, § 12.

4-3-1412. Nondiscrimination.

In compliance with all federal and state laws and constitutional provisions prohibiting discrimination, including, but not limited to, the Civil Rights Act of 1964, Title VI (42 U.S.C. § 2000d), no person, on the grounds of race, color, national origin, age or sex shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity operated by the department of labor and workforce development. This includes, but is not limited to, contracts for services, employment or services to the department's customers.

History.
Acts 1999, ch. 520, § 13.

Compiler's Notes.
For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

Law Reviews.
Government Contractors Beware: Recent Changes to Federal Affirmative Action Requirements (James Francis Barna), 37 No. 9 Tenn. B.J. 14 (2001).

4-3-1413. [Reserved.]

4-3-1414. Notice of entitlement to have state pay health insurance premium.

The commissioner of labor and workforce development, in performing the duties established in title 5, shall also require every business or entity that sponsors a group medical benefit contract in this state to include in each notice issued pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. § 1166 or 42 U.S.C. § 300bb-6), and related laws and regulations, the following additional language:

You may be entitled to have the state of Tennessee pay the premium for

your ongoing health insurance. For more information, contact your local department of human services.

History.
Acts 1991, ch. 420, § 2; T.C.A., § 4-3-1404; Acts 1999, ch. 520, § 24.

4-3-1415. Maintenance and expenditure of funds.

All funds to the credit of the unemployment compensation division of the United States department of labor and to the credit of the state employment service, transferred to the credit of the department of labor and workforce development, shall have their separate identities maintained, and only funds allocated to each of those divisions may be expended by such unit.

History.
Acts 1945, ch. 34, § 3; C. Supp. 1950, § 255.70 (Williams, § 255.71a); T.C.A. (orig. ed.), § 4-318; T.C.A., § 4-3-904; Acts 1999, ch. 520, § 20.

4-3-1416. Distribution of sexual harassment rules.

The department of labor and workforce development shall, in consultation with the human rights commission, promulgate rules that provide for the distribution, in one (1) of the department's regular mailings to the employers, of the state materials explaining the sexual harassment rules of the state human rights commission. These materials, which the employer shall make available to its employees, may be in the form of a poster, brochure, or pamphlet.

History.
Acts 1993, ch. 307, § 5; T.C.A., § 4-3-905; Acts 1999, ch. 520, § 21.

Cross-References.
Posting of sexual harassment policy by state entities, § 4-3-124.
Prevention of sexual harassment, §§ 3-13-101, 4-3-124, 4-3-1703, 49-7-122.

Law Reviews.
What Part of "No" Don't You Understand?: Recent Developments in Workplace Sexual Harassment Law (William D. Evans Jr.), 36 No. 5 Tenn. B.J. 14 (2000).

4-3-1417. Discrimination prohibited.

In making appointments to any board, commission or panel that is administratively attached to the department, the appointing authority shall not discriminate against any person on the basis of race, color, ethnicity, national origin, age, religious belief, sex, or disability. The appointing authority shall strive to ensure that the makeup of all boards, commissions and panels attached to the department reflect and represent the diversity of persons in Tennessee.

History.
Acts 2005, ch. 407, § 5; 2015, ch. 57, § 4.

4-3-1418. [Reserved.]

4-3-1419. License, certification or registration — Notifications — Prerequisites — Website — Notifications by electronic mail.

(a) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each applicant for a professional or occupational license, certification or registration from the department, division, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies, and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies, and guidelines.

(b) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and any division, board, commission, committee, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall establish and maintain a link or links on the entity's website to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and any division, board, commission, committee, agency, or other governmental entity under the jurisdiction of, or administratively attached to, the department shall allow each holder of a professional or occupational license, certification or registration from the department, division, board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and any division, board, commission, committee, agency or other governmental entity under the jurisdiction of, or administratively attached to, the department shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

History.
Acts 2008, ch. 1070, § 9; 2012, ch. 952, § 6.

Compiler's Notes.
Acts 2008, ch. 1070, § 13 provided that each entity subject to the act shall promulgate rules to effectuate the purposes of the act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-1420. We Want to Learn English Initiative.

(a) The department of labor and workforce development, in conjunction with the department of education, shall establish and administer a grant program to be known as the "We Want to Learn English Initiative." The initiative shall be created for the purpose of providing resources for immigrants and refugees in this state to learn English in order to move toward becoming full members of American society.

(b) The department shall utilize existing staff to assist in the implementation of the program and provide grant funding from whatever funding sources available, including, but not limited to, funds from the federal, state, county and municipal governments.

(c) The department of labor and workforce development shall allocate and disperse funds each fiscal year to community-based, not-for-profit organizations, immigrant social service organizations, faith-based organizations and on-site job training programs so that immigrants and refugees can learn English where they live, work, pray and socialize and where their children attend school.

(d) Funds for the We Want to Learn English Initiative may be used only to provide programs that teach English to United States citizens, lawful permanent residents and other persons residing in this state who are in lawful immigration status.

History.
Acts 2009, ch. 366, § 1.

4-3-1421. Program for payment of the cost of licensing tests for adult students with financial need.

The department of labor and workforce development, in conjunction with the department of education, is encouraged to consider the development, implementation and administration of a program for payment of the cost of licensing tests for adult students with financial need who complete a high school diploma or a general educational development (GED®) credential in a career and technical education program and who are required to take a test in order to become licensed for a career in their fields of study.

History.
Acts 2010, ch. 1057, § 1.

4-3-1422. Lois M. DeBerry Alternative Diploma Act — Assessments that lead to high school equivalency credential.

(a) This section shall be known and may be cited as the "Lois M. DeBerry Alternative Diploma Act."

(b) The department of labor and workforce development is authorized to

make recommendations relative to assessments that lead to the award of a high school equivalency credential. The state board shall review the recommendations of the department. Any recommendation approved by the state board of education shall be considered a high school equivalency assessment and the successful completion of such assessment shall lead to the award of a high school equivalency credential. The department, as needed, may consult with or request assistance from other state agencies in performing its duties under this section.

History.
Acts 2012, ch. 787, § 2; 2013, ch. 448, § 1.

PART 15

LEGAL DEPARTMENT

4-3-1501. Creation.

There is hereby created the legal department.

History.
Acts 1929, ch. 22, § 1; Code 1932, § 9950; modified.

Cross-References.
Creation of administrative departments and divisions, § 4-3-101.

4-3-1502. Attorney general and reporter.

The legal department shall be under the charge and general supervision of the attorney general and reporter.

History.
Acts 1929, ch. 22, § 1; Code 1932, § 9950; modified.

Cross-References.
Attorney general and reporter as constitutional officer, appointment, Tenn. Const., art. VI, § 5.

4-3-1503. Powers and duties.

The attorney general and reporter and the attorney general and reporter's assistants shall constitute the legal department, which has the powers and duties specified in title 8, chapter 6.

History.
Acts 1929, ch. 22, § 1; Code 1932, § 9950; modified.

PART 16

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

4-3-1601. Creation — General functions.

(a) There is created the department of mental health and substance abuse services.

(b) The general functions of the department are to coordinate, set standards for, plan for, monitor, and promote the development and provision of services and supports to meet the needs of persons with mental illness or serious emotional disturbance through the public and private sectors in this state as set out in applicable provisions of title 33.

History.
Acts 2010, ch. 1100, § 9; 2012, ch. 575, § 1.

Compiler's Notes.
The department of mental health and substance abuse services, created by this section and § 4-3-101, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Former part 16, §§ 4-3-1601 — 4-3-1603 (Acts 1953, ch. 27, §§ 1, 2 (Williams, §§ 255.68e, 266.68f); impl. am. Acts 1963, ch. 52, § 5; impl. am. Acts 1965, ch. 82, §§ 8, 16; Acts 1971, ch. 411, § 1; 1974, ch. 802, § 1; 1975, ch. 248, § 1; modified; 1978, ch. 617, § 1; T.C.A. (orig. ed.), §§ 4-321, 4-322; Acts 1993, ch. 234, § 10; 2000, ch. 947, §§ 2-6), concerning the department of mental health and developmental disabilities, was repealed and replaced by Acts 2010, ch. 1100, §§ 9 and 10, effective January 15, 2011.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Cross-References.
Transfer to the department of intellectual and developmental disabilities, § 4-3-2705.

4-3-1602. Commissioner.

(a) The department of mental health and substance abuse services shall be in the charge of a commissioner, who shall be appointed by the governor in the same manner as are other commissioners and who shall have the same official status as other commissioners.

(b) The commissioner shall hold office at the pleasure of the governor, and the commissioner's compensation shall be fixed by the governor and paid from the appropriation available to such department.

(c) The commissioner shall be appointed without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership, and must have a recognized graduate degree as a psychiatrist, doctor of medicine, behavioral scientist, social scientist, educator or other profession involved with human development, human welfare or human relations, with experience in public administration; and shall further have a professional background in the area of mental illness or serious emotional disturbance, and an understanding of the conditions of mental health, human development, human welfare and social services.

(d) No person shall be eligible to appointment as commissioner unless such person is at least thirty (30) years of age and has five (5) years of administrative experience, including at least three (3) years of full-time management experience in private enterprise, private practice or public service.

History.
Acts 2010, ch. 1100, § 9; 2012, ch. 575, § 1.

Compiler's Notes.
Former part 16, §§ 4-3-1601 — 4-3-1603 (Acts 1953, ch. 27, §§ 1, 2 (Williams, §§ 255.68e, 266.68f); impl. am. Acts 1963, ch. 52, § 5; impl. am. Acts 1965, ch. 82, §§ 8, 16; Acts 1971, ch. 411, § 1; 1974, ch. 802, § 1; 1975, ch. 248, § 1; modified; 1978, ch. 617, § 1; T.C.A. (orig. ed.), §§ 4-321, 4-322; Acts 1993, ch. 234, § 10; 2000, ch. 947, §§ 2-6), concerning the department of mental health and developmental disabilities, was repealed and replaced by Acts 2010, ch. 1100, §§ 9 and 10, effective January 15, 2011.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-1603. Powers and duties.

(a) The department of mental health and substance abuse services has jurisdiction and control over the mental health facilities of the state, regardless of the names by which the facilities are known.

(b) The department, through its appropriate officials, has the duty and power to provide the best possible care for persons with mental illness or serious emotional disturbance in the state by improving existing facilities, by developing future facilities and programs, and by adopting a preventive program for mental illness and serious emotional disturbance, all as provided in applicable provisions of title 33.

(c) The department of mental health and substance abuse services shall administer title 33, chapter 2, part 4.

History.

Acts 2010, ch. 1100, § 9; 2012, ch. 575, § 1.

Compiler's Notes.

Former part 16, §§ 4-3-1601 — 4-3-1603 (Acts 1953, ch. 27, §§ 1, 2 (Williams, §§ 255.68e, 266.68f); impl. am. Acts 1963, ch. 52, § 5; impl. am. Acts 1965, ch. 82, §§ 8, 16; Acts 1971, ch. 411, § 1; 1974, ch. 802, § 1; 1975, ch. 248, § 1; modified; 1978, ch. 617, § 1; T.C.A. (orig. ed.), §§ 4-321, 4-322; Acts 1993, ch. 234, § 10; 2000, ch. 947, §§ 2-6), concerning the department of mental health and developmental disabilities, was repealed and replaced by Acts 2010, ch. 1100, §§ 9 and 10, effective January 15, 2011.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 17

DEPARTMENT OF HUMAN RESOURCES

4-3-1701. Creation.

There is hereby created the department of human resources.

History.

Acts 1937, ch. 33, §§ 1, 15; 1939, ch. 11, § 10; C. Supp. 1950, § 255.15; Acts 1959, ch. 9, § 2; 1961, ch. 97, § 1; modified; Acts 2007, ch. 60, § 3.

Compiler's Notes.

The department of human resources, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2007, ch. 60, § 3, provided that the references to the department of personnel are changed to the department of human resources effective April 24, 2007.

Acts 2016, ch. 774, § 3, provided that the department of human resources shall appear before the government operations joint evaluation committee on judiciary and government no later than December 31, 2016, to update the committee on the department's progress in addressing the findings set forth in the December 2015 performance audit report.

Cross-References.

Creation of the department of human resources, § 4-3-101.

4-3-1702. Commissioner.

The department of human resources shall be under the charge and general supervision of the commissioner of human resources.

History.

Acts 1937, ch. 33, §§ 1, 15; 1939, ch. 11, § 10; C. Supp. 1950, § 255.15; Acts 1959, ch. 9, § 2; 1961, ch. 97, § 2; modified; Acts 2007, ch. 60, § 3.

Compiler's Notes.

Acts 2007, ch. 60, § 3, provided that the references to the department of personnel are changed to the department of human resources effective April 24, 2007.

4-3-1703. Powers and duties.

(a) The department of human resources has the power and is required to:

(1) Transfer, temporarily, employees from one (1) department to another when necessary to expedite the work of any department;

(2) Exercise the duties vested by title 8, chapter 30;

(3) Establish and maintain a program of training for administrative judges and hearing officers, as defined by § 4-5-102; and

(4) Assist each department and entity of state government in the planning and conduct of training workshops to prevent sexual harassment from occurring. The department is also directed to design an orientation session with appropriate materials, which shall be made available to the departments for distribution to each new employee.

(b) In addition to duties expressly imposed by law upon the department, the department shall:

(1) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in state service;

(2) Make a study of the state service system in those departments of the state government covered by such system and make periodic reports to the governor on recommendations for improvement of the system; and

(3) Make annual reports, and such special reports as it may deem necessary, to the governor and commissioner regarding personnel administration.

History.

Acts 1923, ch. 7, § 12(13); Shan. Supp., § 373a44; Code 1932, § 269(9); Acts 1937, ch. 33, §§ 15, 30, 49; 1939, ch. 11, § 32; mod. C. Supp. 1950, §§ 255.15, 255.49 (Williams, §§ 255.15, 255.52); modified; Acts 1959, ch. 9, § 4; 1961, ch. 97, § 4; T.C.A. (orig. ed.), § 4-329; Acts 1985, ch. 432, § 4; 1986, ch. 738, § 4; 1993, ch. 307, § 1; Acts 2007, ch. 60, § 3; 2012, ch. 800, § 49.

Compiler's Notes.

For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

Acts 2007, ch. 60, § 3, provided that the references to the department of personnel are changed to the department of human resources effective April 24, 2007.

Acts 2012, ch. 800, § 1 provided that the act, which amended subdivision (b)(2), shall be known and cited as the "Tennessee Excellence, Accountability, and Management (T.E.A.M.) Act of 2012."

Cross-References.

Hospital regulation, determination of salary of necessary personnel of department of health, § 68-11-215.

Interdepartmental cooperation, §§ 4-4-109 — 4-4-112.

List of eligible appointees furnished to state departments, § 4-4-106.

Office of legislative administration, prevention of sexual harassment, § 3-13-101.

State university and community college system, prevention of sexual harassment, § 49-7-122.

Supreme court, sexual harassment prevention policy for inferior courts, § 16-3-502.

West Tennessee River Basin Authority, § 64-1-1101.

Law Reviews.

What Part of "No" Don't You Understand?: Recent Developments in Workplace Sexual Harassment Law (William D. Evans Jr.), 36 No. 5 Tenn. B.J. 14 (2000).

PART 18

DEPARTMENT OF HEALTH

4-3-1801. Creation.

There is hereby created the department of health.

History.

Acts 1923, ch. 7, § 1; Shan. Supp., § 373a30; Code 1932, § 255; Acts 1937, ch. 33, § 1; C. Supp. 1950, § 255.1; modified; Acts 1983, ch. 472, § 5.

Compiler's Notes.

The department of health, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

For the transfer of TennCare from the department of finance and administration to the department of health, see Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

Acts 2015, ch. 18, § 3 provided that the Department of Health shall appear before the Government Operations Joint Evaluation Committee on Education, Health and General Welfare no later than December 31, 2015, to update the Committee on the Department's progress in addressing the findings set forth in the November 2014 performance audit report.

Cross-References.

Creation of the department of health, § 4-3-101.

Department representatives as ex officio members of child sexual abuse task force, § 37-1-603.

Organization, powers and duties of department, title 68, ch. 1.

4-3-1802. Commissioner.

The department of health shall be under the charge and general supervision of the commissioner of health.

History.

Acts 1923, ch. 7, § 2; Shan. Supp., § 373a32; Code 1932, § 257; Acts 1937, ch. 33, § 2; C. Supp. 1950, § 255.2; modified; Acts 1983, ch. 472, § 6.

4-3-1803. Powers and duties.

The department of health has the power to:

(1) Have general supervision of the interest relating to the health and lives of the people of the state;

(2) Act in an advisory capacity relative to the public water supply, water purification works, sewerage systems, sewerage treatment works, and exercise supervision over nuisances growing out of the operation of such water and sewerage works, and make, promulgate and enforce rules and regulations relating to such nuisances;

(3) Make such sanitary investigations as may from time to time be deemed necessary for the preservation and improvement of public health;

(4) Make investigations and inquiries with respect to the causes of disease, especially epidemics, investigate the causes of mortality, and the

effect of localities and other conditions on the public health, and make such other sanitary investigations as may be deemed necessary for the preservation and improvement of the public health;

(5) Keep informed of the work of the local health officers and agencies throughout the state;

(6) Promote the information of the general public in all matters pertaining to public health;

(7) Make sanitary, sewerage, health and other inspections and examinations for the charitable and penal institutions and the normal schools;

(8) Inspect from time to time all hospitals and sanitaria and other institutions conducted by county, city or town authorities and report as to the sanitary conditions and interests of such hospitals, sanitaria and institutions to the official authority having jurisdiction over them;

(9) Print, publish and distribute documents, reports, bulletins, certificates and other matter relating to the prevention of diseases, and the health and sanitary condition of the state;

(10) Exercise all the rights, powers and duties relating to the subject of tuberculosis control and treatment set forth in title 68, chapter 9, and have custody and control of all reports, records and equipment appertaining thereto;

(11) Exercise all the rights, powers and duties relating to the administration of the children's special services set forth in title 68, chapter 12, and have custody and control of all records, reports and equipment appertaining thereto;

(12) Carry out the policies of the state as set forth in title 68, chapter 34, relative to family planning; and

(13) Carry out the purposes and programs pertaining to alcoholism and drug dependence in title 68, chapter 24.

History.

Acts 1923, ch. 7, § 46; Shan. Supp., § 373a107; Code 1932, § 325; Acts 1937, ch. 33, §§ 64, 65; 1939, ch. 144, § 1; mod. C. Supp. 1950, § 325 (Williams, §§ 255.67, 255.68, 325); Acts 1959, ch. 9, § 13; impl. am. Acts 1963, ch. 52, § 5; Acts 1971, ch. 400, § 2; T.C.A. (orig. ed.), § 4-314; Acts 1983, ch. 472, § 7; 1993, ch. 234, § 11.

Compiler's Notes.

For transfer of the bureau of environment in the department of health and its related functions and the administration of the Tennessee environmental statutes (excluding title 68, chs. 14, 110 and 112) from the department of health to the department of environment and conservation, see Executive Order No. 42 (February 4, 1991).

Cross-References.

Commission on aging, commissioner as member, § 71-2-104.

PART 19

DEPARTMENT OF REVENUE

4-3-1901. Creation — Organization.

(a) There is hereby created the department of revenue.

(b) The commissioner of revenue shall determine the organization of and the methods of procedure within the department that are deemed suitable or necessary to exercise the powers conferred and perform the duties imposed by

law and shall appoint, in accordance with applicable personnel guidelines and budgetary limitations, such assistants as are deemed necessary to effectively discharge the duties of the office in an orderly and efficient manner.

History.
Acts 1921, ch. 113, § 3; 1923, ch. 7, § 1; Shan. Supp., §§ 373a30, 809a10; mod. Code 1932, §§ 255, 1479; Acts 1937, ch. 33, § 1; C. Supp. 1950, § 255.1; Acts 1959, ch. 9, § 14; modified; Acts 1963, ch. 99, § 1; 1973, ch. 368, § 2; 1978, ch. 599, § 2; T.C.A. (orig. ed.), § 67-104.

Compiler's Notes.
The department of revenue, created by this section and § 4-3-101, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Cross-References.
Creation of the department of revenue, § 4-3-101.

4-3-1902. Commissioner.

The department of revenue shall be under the charge and general supervision of the commissioner of revenue.

History.
Acts 1923, ch. 7, § 2; Shan. Supp., § 373a32; Code 1932, § 257; Acts 1937, ch. 33, § 2; C. Supp. 1950, § 255.2; Acts 1959, ch. 9, § 14; modified.

Cross-References.
General organization, powers and duties of department, title 67, ch. 1, part 1.

Increment of taxes resulting from construction of levee, commissioner fixing amount to be retained by county, § 69-4-108.

4-3-1903. Powers and duties.

(a) The commissioner is vested with power to prescribe rules and regulations not inconsistent with law and prepare such forms as the commissioner may deem proper for the administration of the duties of the commissioner's office.

(b) The department of revenue has the power to:

(1) Administer the assessment and collection of all state taxes except those for which responsibility is expressly conferred by statute upon some other officer or agency;

(2) Administer the assessment and collection of privilege taxes;

(3) Receive state revenues collected by county officials and make and retain records of same;

(4) Investigate the tax systems of other states, and formulate and recommend to the governor such legislation as may be deemed expedient to prevent evasion of taxes, to secure just and equitable taxation and to improve the system of taxation in the state;

(5) Examine, at any and all times, the accounts of any private corporation, institution, association or board receiving appropriations from the general assembly;

(6) Require a complete record of the officers, assistants and employees appointed by the commissioners of the various departments, and require the salaries of the same to be in conformity with the scale authorized; and

(7) Procure from any department or agency of the state, or any of its political subdivisions, a copy of the complete record maintained by it of any convictions for violation of any criminal laws by any person who has made

application to the department for employment, for the exclusive use of the department in screening the applicant to determine suitability for an appointment therein.

History.

Acts 1921, ch. 113, § 2; 1923, ch. 7, §§ 12, 19; 1923, ch. 106, § 1; Shan. Supp., §§ 373a44, 373a56, 809a8; Code 1932, §§ 269, 1478; Acts 1933, ch. 92, § 1; 1937, ch. 33, §§ 50, 51; 1937, ch. 291, § 1; 1945, ch. 57, § 1; 1947, ch. 17, § 3; C. Supp. 1950, §§ 255.50, 255.51 (Williams, §§ 255.53, 255.54, 269); modified; impl. am. Acts 1959, ch. 9, § 14; Acts 1965, ch. 5, § 1; 1965, ch. 154, § 1; 1970, ch. 500, § 2; 1970, ch. 559, § 4; 1973, ch. 151, § 1; 1973, ch. 368, § 1; 1973, ch. 373, § 1; 1977, ch. 106, § 1; 1978, ch. 531, § 1; T.C.A. (orig. ed.), §§ 4-305, 4-306; Acts 1978, ch. 599, § 1; 1980, ch. 460, § 1; T.C.A. (orig. ed.), § 67-101(1).

Cross-References.

General organization, powers and duties of department, title 67, ch. 1, part 1.

PART 20

DEPARTMENT OF SAFETY

4-3-2001. Creation.

There is created and established the department of safety.

History.

Acts 1937, ch. 33, § 15; C. Supp. 1950, §§ 255.1, 255.15; T.C.A. (orig. ed.), § 4-319; modified.

Compiler's Notes.

The department of safety, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2014, ch. 773, § 3 provided that the division of state audit shall return to the department of safety in 2016 for the purpose of conducting a limited audit to review actions taken by the department to address the issues raised in the findings of the October 2013 performance audit report. The division of state audit shall complete the limited audit within a period sufficient to allow for its review by the government operations joint subcommittee on judiciary and government no later than December 1, 2016.

Cross-References.

Accidents, reports to and duties of department regarding, title 55, ch. 10, part 1.

Anti-theft law, motor vehicles, powers and duties of department, title 55, ch. 5, part 1.

Creation of the department of safety, § 4-3-101.

Drivers' licenses, law administered by department, title 55, ch. 50, part 2.

Financial Responsibility Law, administration by department, § 55-12-103.

Rules and regulations as to highway use prescribed by department, § 55-7-101.

4-3-2002. Commissioner.

(a) The head of this department shall be the commissioner of safety, who shall be appointed by the governor and hold office at the governor's pleasure.

(b) The commissioner shall be qualified as a disciplinarian and experienced in matters pertaining to safety.

History.

Acts 1937, ch. 33, § 15; 1939, ch. 11, § 10; 1945, ch. 28, § 3; C. Supp. 1950, §§ 255.1, 255.15; T.C.A. (orig. ed.), § 4-319.

Cross-References.

Financial Responsibility Law, administration, § 55-12-103.

Peace officer standards and training commission, member, § 38-8-102.

Rules and regulations governing weighing of freight motor vehicles, promulgation by commissioner, § 55-7-205.

4-3-2003. Highway patrol duties.

The department of safety shall assume and exercise the powers and duties of the Tennessee highway patrol under chapter 7 of this title.

History.
Acts 1937, ch. 33, § 44; 1939, ch. 11, § 27; mod. C. Supp. 1950, § 255.45 (Williams, § 255.46); T.C.A. (orig. ed.), § 4-320; modified.

4-3-2004. Notary powers of department employees.

(a)(1) The commissioner of safety is authorized to designate in writing employees of the department of safety, who shall be authorized to take acknowledgements and administer oaths and perform other notarial acts with respect to applications, reports and any and all other documents required by law or departmental regulation to be filed with the department.

(2) Any employee so designated is authorized to perform the services and functions of a notary public with respect to such matters exclusively under the supervision and administration of the department, but no further nor otherwise.

(3) A written list of the employees so designated shall be posted in the office of the commissioner and shall be open to inspection at all business hours.

(b) Any false statement made on oath or affirmation before any such person shall subject the offender to punishment for perjury under the penalties now provided by law.

History.
Acts 1939, ch. 11, § 10; 1945, ch. 28, § 3; C. Supp. 1950, § 255.15; Acts 1961, ch. 3, § 1; T.C.A., § 4-319.

Cross-References.
Perjury, title 39, ch. 16, part 7.

4-3-2005. Hearing officers — Review of initial orders.

(a) The commissioner of safety, in the commissioner's discretion, is hereby authorized to appoint or designate hearing officers to conduct contested case hearings under the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(b) The commissioner shall delegate the commissioner's authority to review initial orders in contested cases suspending or revoking driver licenses to the administrative procedures division of the office of the secretary of state for review by an administrative judge with such division. The commissioner may delegate the commissioner's authority to review initial orders under this subsection (b) to one (1) or more additional persons. Review of initial orders shall be subject to further review and final disposition by the commissioner.

(c) The time taken to review an initial order shall not extend the time provided in § 4-5-315 for rendering and entering a final order or order remanding the case for further proceedings by the commissioner.

History.
Acts 1979, ch. 371, § 1; T.C.A., § 4-319; Acts 1982, ch. 874, § 65.

4-3-2006. Division of protective services.

(a)(1) There is created within the department of safety a division of protective services.

(2) This division shall exercise the powers and duties formerly imposed upon the department of general services to provide police services by sworn officers for the State Capitol, the Legislative Plaza, the War Memorial Building and all state office buildings, and to provide personal security from time to time of state officials as directed by the commissioner, along with the primary, but not exclusive, responsibility of enforcing the parking regulations and policies as established by the department of general services.

(3) This division shall oversee the state facility protection officer program in conjunction with the commissioner or the commissioner's designee pursuant to § 4-3-2019(c)(1).

(b)(1) The commissioner of safety shall be authorized to issue special police commissions to qualified state security personnel, who are full-time salaried employees of the state, to go armed or carry pistols while on active duty engaged in carrying out their responsibilities under subsection (a).

(2) Such commissions shall only be issued to those personnel who have satisfactorily completed appropriate training and are certified as qualified, including physical and mental competency, to carry firearms by the Jerry F. Agee Tennessee law enforcement training academy or other similar agency; provided, that security personnel employed before July 1, 1980, shall not be required to meet the training or mental and physical requirements set out in this subdivision (b)(2) as a condition of tenure or continued employment, nor shall their failure to fulfill such requirements make them ineligible for any promotional examination for which they are otherwise eligible.

(3) Nothing contained herein shall be construed to impose upon such security personnel the same criteria for employment and retention in state service as are required of members of the Tennessee highway patrol.

History.
Impl. am. 1979, ch. 93, § 1; Acts 1980, ch. 884, § 1; 2017, ch. 153, §§ 1, 2.

Cross-References.
Highway patrol, title 4, ch. 7.

4-3-2007. Rules and regulations regarding motor vehicles.

Subject to the approval of the department of general services under the authority of § 4-3-1105(9), the department of safety shall develop rules and regulations for the acquisition, assignment, use and disposal of motor vehicles. Such rules and regulations should promote the efficient and effective use of motor vehicles in law enforcement activities. These rules and regulations are also subject to approval by the department of finance and administration.

History.
Acts 1981, ch. 501, §§ 4, 5.

4-3-2008. Subpoena to institutions of higher education — Information related to nonimmigrant students in possession of F-1 or M-1 student visa.

(a) The commissioner of safety is authorized to issue a subpoena for valid law enforcement purposes to an institution of higher education in this state to compel the production of the following information with regard to nonimmigrant students possessing either an F-1 or M-1 student visa for instruction at the institution:

(1) The number of nonimmigrant students enrolled at the institution at the beginning of a period of study;

(2) The number of nonimmigrant students enrolled at the institution at the end of a period of study; and

(3) The name and address of the nonimmigrant students who were enrolled at the beginning of the period of study but were not enrolled at the end of the period of study.

(b) The commissioner has the discretion to include, in a subpoena issued under this section, a directive that the existence or contents of the subpoena or the information furnished in response to the subpoena is not to be disclosed by the institution to the students whose names and addresses are released to the commissioner.

(c) As used in this section:

(1) "Institution" means a college, university, seminary, vocational or technical school, or any other entity that offers a postsecondary course of study. "Institution" does not include elementary, middle, or secondary schools; and

(2) "Period of study" means a quarter, semester, or the duration of a program that is not otherwise divided.

History.
Acts 2016, ch. 812, § 1.

Compiler's Notes.
Former § 4-3-2008 (Acts 1985, ch. 476, §§ 1, 2), concerning compensation of the commissioned members of the division of motor vehicle enforcement, was rendered ineffective by Acts 1986, ch. 935, § 8. For present law, see ch. 7, part 2 of this title.

4-3-2009. Rules and regulations regarding administration.

The commissioner of safety has the authority to establish and to promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and that are not inconsistent with the laws of this state.

History.
Acts 1988, ch. 511, § 1.

4-3-2010. Division of motor vehicle enforcement — Duties — Odometer fraud.

(a) The division of motor vehicle enforcement, or such other division of the department as may be directed to by the commissioner, has the following responsibilities and duties:

(1) Perform odometer fraud investigations, detect altered titles and vehicles, identify perpetrators, secure vehicle documentation and evidence for eventual indictment and prosecution of persons involved in odometer fraud;

(2) Perform covert odometer fraud investigations of individuals and dealers in odometer tampering by use of surveillance, undercover odometer rollbacks, title washing buys and other techniques;

(3) Perform overt odometer fraud investigations of individuals and dealers by interpreting title histories, interviewing subjects, informants, spinners and suspected perpetrators and utilizing lab analysis reports to support altered documents;

(4) Prepare odometer fraud outline memoranda to be used by United States attorneys in the indictment and prosecution of odometer tamperers;

(5) Assist United States attorneys in the indictment and trial process of major odometer fraud cases, and analyze and evaluate the total factual investigation for maximum effectiveness in the trial presentation by the United States attorneys;

(6) Testify before grand juries and in criminal prosecutions;

(7) Serve subpoenas in the investigation and prosecution of odometer fraud;

(8) Assist and coordinate with state and federal agencies nationwide in the investigation and prosecution of odometer fraud;

(9) Train and supervise persons involved in investigations by the unit; and

(10) Perform other duties relative to odometer fraud as may be assigned to the unit by the division.

(b) The division shall maintain agents in each grand division to investigate odometer fraud, but the activities of such agents shall be coordinated so as to ensure the most effective use of all employees.

(c) The increased costs imposed on the department by this section and of Acts 1989, chapter 276 amending §§ 55-2-112 and 55-6-101 shall be funded from the increase in the state fee for certificates of title authorized by chapter 276 of the Public Acts of 1989, increasing the fee from three dollars ($3.00) to three dollars and fifty cents ($3.50).

History.
Acts 1989, ch. 276, § 1; 2013, ch. 308, § 19.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-3-2011. Organ and tissue donor registry.

(a)(1)(A) The organ procurement organization, as defined in § 68-30-102, serving Tennessee may create and maintain an electronic registry of Tennesseans who have given consent to be organ and tissue donors. On a weekly basis, the department of safety shall transmit to the electronic registry the following information on those individuals who have given consent to be organ and tissue donors:

(i) True full name;

(ii) Residence or mailing address;

(iii) Date of birth; and

(iv) Tennessee driver license number.

(B) The information obtained by the organ procurement organization for the purposes of subdivision (a)(1)(A) shall be used for these purposes only and shall not be disseminated further by the organ procurement organization.

(2) The department shall offer each applicant for issuance or renewal of a driver license the opportunity for the applicant to give consent to be an organ and tissue donor. Each applicant shall be offered the opportunity to give consent by responding affirmatively to the following statement: "Yes, I want to be an organ and tissue donor."

(3) The department shall advise each applicant by making available the brochure referred to in subdivision (a)(4) or otherwise, that the applicant is under no compulsion to consent to be an organ and tissue donor. An individual who responds affirmatively to the consent statement gives full legal consent to donate the organs or tissue of the individual upon death. An individual may give or withdraw consent by any means provided by law, including, but not limited to, notifying the registry in writing or by electronic access to the registry.

(4) A brochure shall be made available to each applicant explaining the execution of a document of gift for organ and tissue donation, including the consent statement referred to in subdivision (a)(2). The brochure may be made available by electronic means. The brochure shall be provided to the department free of charge by the organ procurement organization.

(b) The department shall engage in public information and other activities to encourage all Tennesseans to become organ and tissue donors and to be so identified within the organ and tissue donor registry. Furthermore, in order to encourage and promote the highest level of organ and tissue donorship within the state, the commissioner shall periodically coordinate and convene strategy and planning meetings for representatives of the departments of commerce and insurance, education, and health, Tennessee organ and tissue donor service agencies, Tennessee hospitals, Tennessee physicians' organizations, as well as other organizations and entities that seek to promote and encourage organ and tissue donorship within the state.

History.

Acts 1990, ch. 775, § 1; 2006, ch. 767, § 1; 2007, ch. 428, § 4.

Compiler's Notes.

Acts 2006, ch. 767, § 2 provided that subdivision (a)(2) shall become effective at such time as the department of safety finds it necessary to reprint driver license application forms. Per the code commission, the contingency has been met and subdivision (a)(2) is in effect.

Cross-References.

Recipients of dead bodies, notification of communicable disease or AIDS, § 68-5-102.

Revised Uniform Anatomical Gift Act, title 68, ch. 30.

4-3-2012. Rules and regulations regarding motor carriers.

The department of safety has the power to exercise all duties, responsibilities and powers granted the department in title 65, chapter 15, to establish and promulgate rules and regulations necessary for the administration and enforcement of title 65, chapter 15.

History.

Acts 1995, ch. 305, § 67.

4-3-2013. Required driving under the influence information to be posted on website of department.

The department of safety shall develop and maintain, upon its web page on the world wide web of the internet, information concerning driving under the influence of an intoxicant, including, but not limited to, the penalties for violations of the state's drunk driving laws, the blood alcohol concentration (BAC) limit, the penalties for refusing to take a breath test, the fees to have a driver license reinstated after an alcohol-related offense, the penalties for unlawful possession of alcohol by minors and statistical information concerning drunk driving. The department is authorized to include additional information on the web page as deemed necessary by the department to combat drunk driving in Tennessee.

History.
Acts 2001, ch. 237, § 1.

Compiler's Notes.
Information on driving under the influence is posted on the department of safety's website at the following location: http://www.tn.gov/safety/duioutline.shtml.

4-3-2014. [Reserved.]

4-3-2015. Memorandum of understanding with United States department of homeland security concerning enforcement of federal immigration laws.

(a) The commissioner of safety may negotiate the terms of a memorandum of understanding between the state of Tennessee and the United States department of homeland security concerning the enforcement of federal immigration laws, detention and removals, and investigations in the state.

(b) The memorandum of understanding shall be signed on behalf of the state by the commissioner of safety and the governor or as otherwise required by the appropriate federal agency.

(c) The commissioner of safety shall designate that appropriate employees of the Tennessee highway patrol be trained pursuant to the memorandum of understanding. There shall be at least one (1) employee of the Tennessee highway patrol in each district office of the highway patrol who is trained pursuant to the memorandum of understanding.

(d) Funding for training shall be provided pursuant to the Homeland Security Appropriation Act of 2006, Public Law 109-90, or subsequent federal funding sources.

History.
Acts 2007, ch. 165, § 1.

4-3-2016. Connecting cell phone callers to the nearest highway patrol dispatcher through *THP (*847) program.

The department of safety is encouraged to increase its consumer information efforts about the *THP (*847) program, which connects cell phone callers to the nearest highway patrol dispatcher. The information efforts should seek to

educate the motoring public about dialing "*THP (*847)" to report drivers who are violating the rules of the road to the highway patrol.

History.
Acts 2008, ch. 1198, § 1.

4-3-2017. Authority to enter into agreements with nonprofit organizations to promote and support goals and objectives of agency.

(a) The department of safety is authorized to enter into agreements with nonprofit organizations for the purpose of promoting and supporting the goals and objectives of the agency, including, but not limited to, law enforcement, safety education, motorist services, disaster preparedness and prevention, and marketing opportunities. No contractual agreement shall be entered into with any nonprofit entity that is tax exempt under United States Internal Revenue Code § 501(c)(3) (26 U.S.C. § 501(c)(3)), as a religious organization, an organization that is affiliated with a religious organization as defined in 26 CFR 1.6033-2(h), a nonprofit entity that is tax exempt under United States Internal Revenue Code § 527 (26 U.S.C. § 527), as a political organization, or an organization that is affiliated with a political organization, as "affiliated" is defined in 11 CFR, chapter 1.

(b) This section shall not be interpreted to abridge any powers or duties delegated to the agency in this part.

(c) The nonprofit shall have its board of directors elected by a process approved by the governor or the governor's designee.

(d) The nonprofit shall be properly incorporated under the laws of this state, and approved by the internal revenue service as an organization that is exempt from federal income tax under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), by virtue of being organizations described in § 501(c)(3) of the Internal Revenue Code.

(e) The nonprofit shall annually submit to the governor, the speakers of the senate and the house of representatives, within ninety (90) days after the end of its fiscal year, a complete and detailed report setting forth its operation and accomplishments.

(f) The annual reports and all books of accounts and financial records of all funds received by grant, contract or otherwise from state, local or federal sources shall be subject to audit annually by the comptroller of the treasury. With prior approval of the comptroller of the treasury, the audit may be performed by a licensed independent public accountant selected by the nonprofit partner. If an independent public accountant is employed, the audit contract between the nonprofit partner and the independent accountant shall be on contract forms prescribed by the comptroller of the treasury. The cost of any audit shall be paid by the nonprofit partner. The comptroller of the treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until approved by the comptroller of the treasury.

(g) All full board meetings of a nonprofit organization concerning activities authorized by this section shall be open to the public, except for executive sessions that include, but are not limited to, any of the following matters: litigation; audits or investigations; human resources issues; gift acceptance deliberations; board training; governance; donor strategy sessions; and security measures.

(h) All contributions to and expenditures of a nonprofit organization relating to activities authorized by this section shall be open for public inspection upon specific request to the nonprofit organization.

(i) The proposed charter and any proposed amendments of a nonprofit organization shall be submitted to the comptroller of the treasury for review and comment prior to the adoption of any such charter or amendments.

History.
Acts 2012, ch. 813, § 1.

Cross-References.
Open meetings law, title 8, ch. 44.

Attorney General Opinions.
Exclusion of religious or political nonprofit organizations from certain state contracts. OAG 12-29, 2012 Tenn. AG LEXIS 29 (3/2/2012).

4-3-2018. Authority of department regarding statewide P25 interoperable communications system.

(a) The department has the authority to promulgate rules and regulations regarding access to its statewide P25 interoperable communications system, including the authority to collect, by rules or regulations, assessments for the use and/or maintenance of the system.

(b) Any assessments collected by the department pursuant to the rules and regulations established in subsection (a) shall be expendable receipts of the department for use in maintaining the statewide P25 interoperable communications system.

History.
Acts 2013, ch. 184, § 1.

4-3-2019. State facility protection officers.

(a) The commissioner of safety may appoint and commission peace officers as provided in this section. Such peace officers shall be known as state facility protection officers. Any company licensed under title 62, chapter 35 as a private protective service and which has a contract with the state to provide armed guards may apply to the commissioner of safety for the appointment and commissioning of such number of its employees as the company shall designate to act as state facility protection officers.

(b)(1) The commissioner, or the commissioner's designee, upon receipt of a state facility protection officer application, shall review the application to verify the person seeking the commission is qualified to receive such commission, and may issue such commission if all requirements are met.

(2) No person shall be commissioned unless:

(A) The person holds an armed guard certification issued under title 62, chapter 35;

(B) The person has received initial civilian or military training substantially similar to that of the peace officers standards and training commission in the areas pertaining to their duties;

(C) The person substantially meets the pre-employment standards as set forth by the peace officers standards and training commission; and

(D) The person has completed a department approved training course pertaining to their duties as a state facility protection officer.

(3) All commissioned persons are required to maintain their armed guard certification and comply with any required, recurrent training as may be mandated by the department.

(4) The commission issued under this subsection (b) shall only be issued to persons who are assigned to property or buildings owned or leased by the state.

(c)(1) The state facility protection officer program shall be overseen and directed by the commissioner or the commissioner's designee.

(2) Each state facility protection officer assigned in accordance with subdivision (b)(4) shall have and exercise the following authority for the sole purpose of carrying out the scope of assigned duties as specified or limited within the exclusive judgment of the department of safety:

(A) The authority to make arrests for public offenses committed against state officials or employees or committed upon, about, or against property owned or leased by the state or on public roads or rights-of-way passing through such owned or leased property;

(B) The authority to provide security at property owned or leased by the state; and

(C) The authority to carry weapons for the reasonable purposes of the officer's employment and only while in the performance of the officer's assigned duties.

(d) Every state facility protection officer appointed pursuant to this section, when on duty shall possess a badge or identification card issued by the department identifying the officer as a state facility protection officer, and the officer shall exhibit the badge or identification card on demand and before making an arrest.

(e)(1) When a person appointed and commissioned as a state facility protection officer leaves employment with the company that person's powers as a state facility protection officer shall cease and terminate at that time. The company shall notify the commissioner in writing within one (1) business day of the person leaving employment, and shall return any badge or identification to the department within five (5) business days of the day the person leaves employment.

(2) When the department no longer requires the services of a person appointed and commissioned as a state facility protection officer, the department of safety shall notify the company. Upon notification, the powers of the state facility protection officer shall cease and terminate. The company shall not return the person to an assignment under the contract and shall return any badge or identification held by the person to the department.

History.
Acts 2014, ch. 855, § 1; 2017, ch. 153, § 3.

PART 21

DEPARTMENT OF STATE

4-3-2101. Creation — Secretary of state as chief officer.

There is created the department of state through which the secretary of state, who shall be the chief officer of the department, shall administer the duties imposed upon the secretary of state by law.

History.
Acts 1959, ch. 9, § 7; T.C.A., § 4-338; modified.

Cross-References.
Administrative procedures division, § 4-5-321.

Creation of the department of state, § 4-3-101.

Secretary of state as constitutional officer, appointment, Tenn. Const., art. III, § 17.

4-3-2102. Department and secretary subject to general laws.

The secretary of state, as the chief officer of the department, and the department are subject to all laws applying generally to administrative heads of departments and administrative departments, not inconsistent with the secretary of state's status as a constitutional officer.

History.
Acts 1959, ch. 9, § 7; T.C.A., § 4-338.

4-3-2103. Administrative attachment of state election commission.

The state election commission is hereby attached to the department of state for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The autonomy of the state election commission and its authority are not affected hereby.

History.
Acts 1959, ch. 9, § 7; impl. am. Acts 1972, ch. 740, § 6; T.C.A., § 4-338.

Cross-References.
State election commission, title 2, ch. 11, part 1.

PART 22

DEPARTMENT OF TOURIST DEVELOPMENT

4-3-2201. Creation — Commissioner as chief administrator.

There is hereby established the department of tourist development, the chief administrator of which shall be the commissioner of tourist development.

History.
Acts 1976, ch. 468, § 1; T.C.A., § 4-345.

Compiler's Notes.
The department of tourist development, created by this section and § 4-3-101, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Acts 2006, ch. 586, § 1 provided that the department of tourist development is encour-

aged to conduct a study to determine the feasibility of designing, manufacturing, distributing, and selling of commemorative Tennessee license plates for display on the front of motor vehicles and for the purpose of generating revenue for promotion of tourism in Tennessee.

Cross-References.
Creation of the department of tourist development, § 4-3-101.

4-3-2202. Appointment of commissioner — Qualifications.

(a) The commissioner shall be appointed by the governor to serve at the governor's pleasure and shall receive a salary in accordance with § 8-23-101.

(b) The commissioner shall be a person qualified by training and experience to perform the duties of the commissioner's office.

History.
Acts 1976, ch. 468, § 1; T.C.A., § 4-345.

4-3-2203. Divisions — Creation.

The commissioner is authorized to create, with the approval of the governor, such new divisions as are necessary to carry out the duties imposed upon the commissioner and the department.

History.
Acts 1976, ch. 468, § 2; T.C.A., § 4-346; Acts 2013, ch. 132, § 3.

Cross-References.
Creation of tourism division, § 4-3-2204.
Reorganization of divisions, § 4-4-101.

4-3-2204. Tourism division — Creation — Director — Personnel — Duties.

(a)(1)(A) There shall be in the department of tourist development, a tourism division, to be under the direction and charge of the commissioner of tourist development, who shall, however, appoint a person to be known as the director of the tourism division, who shall perform such duties respecting the work of the division as the commissioner shall, from time to time, prescribe.

(B) The director shall be a competent person, having executive ability and properly informed on the plans and methods of public contracts, publicity, advertising and tourist promotion, and shall have charge of all active functions of the division and the enforcement of the orders, rules and regulations of the commissioner, subject to and under the commissioner's jurisdiction and direction.

(2) The commissioner may transfer to such division, or assign to its work, any employees of the department, and, subject to appropriations, may appoint or employ such other persons as the commissioner may find necessary for the work of the division in carrying out this section and §§ 4-3-2206 — 4-3-2208.

(b) The division shall promote new investment in the tourist industry, provide comprehensive services to existing tourist enterprises, promote in other states the attractions of Tennessee, distribute Tennessee informational publications and supervise the system of welcome centers in the state.

History.

Acts 1937, ch. 281, § 1; C. Supp. 1950, § 630.35 (Williams, § 630.26); impl. am. Acts 1959, ch. 9, § 11; impl. am. Acts 1963, ch. 169, § 3; impl. am. Acts 1972, ch. 852, §§ 12, 14; impl. am. Acts 1976, ch. 468, § 2; Acts 1976, ch. 468, § 2; T.C.A. (orig. ed.), §§ 4-346, 11-601, 11-25-101.

Cross-References.

Authority of commissioner to create divisions, § 4-3-2203.

4-3-2205. [Reserved.]

4-3-2206. Powers and duties of commissioner.

(a) The commissioner, acting through the tourism division, shall, in accordance with the rules, regulations, policies and procedures of the state publications committee:

(1) Collect, compile and distribute literature as to the facilities, advantages and attractions of the state, the historic, recreational and scenic points and places of interest within the state and the transportation and highway facilities of the state;

(2) Plan and conduct a program of information and publicity designed to attract to the state tourists, visitors and other interested persons from outside the state, and also encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state for the same purposes;

(3) Publicize the material and economic advantages of the state that render it a desirable place for business and residence; and

(4) Carry on such educational programs as are necessary to familiarize the people of the state with the scenic, historical, industrial, recreational and agricultural advantages or needs of the state.

(b) To carry out the purpose and intent of this section and §§ 4-3-2204, 4-3-2207, and 4-3-2208, the commissioner is authorized and empowered to:

(1) Form contracts with agencies of any type or wherever situated, that will tend to promote the objectives of advertising Tennessee to nonresidents;

(2) Gather and compile, in accordance with the rules, regulations, policies and procedures of the state publications committee, information from branches of the state government and others, that will promote authentic information for advertising purposes;

(3) Enter into cooperative agreements and contracts with such individuals, partnerships, corporations public or private, associations, societies, educational institutions, chambers of commerce, automobile associations, and other organized groups as may be deemed advantageous and proper by the commissioner to effectuate the intent and purpose of this section and §§ 4-3-2204, 4-3-2207, and 4-3-2208; provided, that an authenticated copy of all such contracts shall be filed with the comptroller of the treasury and shall be approved by the attorney general and reporter;

(4) Accept unconditional gifts of money to be expended in furtherance of the purposes of this section and §§ 4-3-2204, 4-3-2207, and 4-3-2208;

(5) Within the limits of available funds, match any moneys advanced for the purposes of this section and §§ 4-3-2204, 4-3-2207, and 4-3-2208, by the federal government, or by any state, county, municipality, corporation, association, society, development district, regional council, association of

local governments or individual; and

(6) Within the limits of available funds, enter into such cooperative agreements or contracts with any instrumentality of the federal government, municipal or county government of Tennessee, or any other state or group of states that, in the judgment of the commissioner, will effectuate the purposes of this section and §§ 4-3-2204, 4-3-2207, and 4-3-2208.

History.

Acts 1937, ch. 281, §§ 2, 3; C. Supp. 1950, §§ 630.36, 630.37 (Williams, § 630.28); impl. am. Acts 1959, ch. 9, § 11; impl. am. Acts 1963, ch. 169, § 3; impl. am. Acts 1972, ch. 852, §§ 12, 14; impl. am. Acts 1976, ch. 468, § 2; T.C.A. (orig. ed.), §§ 11-602, 11-603, 11-25-102, 11-25-103; Acts 1990, ch. 1024, §§ 6, 7; 2009, ch. 125, § 1.

Compiler's Notes.

For transfer of the rest area system, excluding the rest area in Smith County, in the department of tourist development and its related functions to the department of transportation, see Executive Order No. 44 (February 4, 1991).

Cross-References.

Powers and duties of tourism division, § 4-3-2204.

4-3-2207. Regional tourist promotion — State assistance.

(a) It is the intent of the state to assist financially with the development of regional plans for tourist promotion and for coordination of activities thereunder.

(b) From and after the creation of any regularly chartered, nonprofit tourist promotion organization or a tax exempt public agency representing all the area within a planning region of this state as delineated by the [former] state planning office and reiterated by Executive Order No. 17, and when the local people shall indicate their willingness to contribute financially, then the state shall be authorized to match such local contributions up to a maximum of thirty-five thousand dollars ($35,000) annually on the basis of two dollars ($2.00) in matching state funds for each one dollar ($1.00) contributed by the local people involved. The aggregate of such funds may also be used for purposes of matching various federal programs of assistance for tourist promotion. Cities and counties are specifically authorized to appropriate and expend funds for carrying out the purposes of this section and §§ 4-3-2204, 4-3-2206, and 4-3-2208.

(c) Each organization operating under this section and §§ 4-3-2204, 4-3-2206, and 4-3-2208 shall operate subject to the supervision and control of the commissioner of tourist development.

(d) State funds shall be contributed to any such organization only upon recommendation of the commissioner of tourist development and the approval by the commissioner of finance and administration.

(e) Each organization operating under this section and §§ 4-3-2204, 4-3-2206, and 4-3-2208 shall prepare an annual audit report of its activities through June 30 of each year, and submit a copy of such report to the governor and the general assembly, and the commissioner of tourist development. Financial records of each participating organization shall be subject to audit by the comptroller of the treasury.

(f) Funds appropriated to implement this section are subject to the approval of the governor and the commissioner of tourist development. Such funds or

portions thereof shall be paid only upon certification by the appropriate official of each participating organization that matching local funds are available.

(g) Such funds shall be from the appropriations of the department of tourist development, tourism division and shall be used for the sole purpose of permitting the state to match funds contributed by the local people involved. Any such funds not distributed under this section shall revert to the general fund at the end of the fiscal year.

History.

Acts 1970, ch. 552, § 1; impl. am. Acts 1972, ch. 542, § 15; impl. am. Acts 1972, ch. 852, §§ 12, 14; Acts 1973, ch. 164, § 1, 2; impl. am. Acts 1976, ch. 468, § 2; T.C.A., §§ 11-605, 11-25-105; Acts 1989, ch. 94, § 1; 1994, ch. 660, § 1; 2009, ch. 125, § 2.

Compiler's Notes.

The state planning office, referred to in this section, was abolished by Acts 1995, ch. 501, effective June 12, 1995.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Attorney General Opinions.

Development districts need not be "regularly chartered, nonprofit tourist promotion organization[s]" in order to contract with the Tennessee Department of Tourist Development as regional tourism organizations, OAG 07-001, 2007 Tenn. AG LEXIS 1 (1/4/07).

4-3-2208. Annual appropriation — Expenditure.

The sum of one hundred thousand dollars ($100,000) annually, or so much thereof as may be necessary, is appropriated out of the general fund of the state, not otherwise appropriated, to the department of tourist development, for carrying out §§ 4-3-2204, 4-3-2206 and 4-3-2207 for maintenance and operation, including personal services, to be paid out of the general fund of the state treasury in the form and manner as now prescribed for the expenditures of other public funds.

History.

Acts 1937, ch. 281, § 4; C. Supp. 1950, § 630.38 (Williams, § 630.29); impl. am. Acts 1972, ch. 852, §§ 12, 14; impl. am. Acts 1976, ch. 468, § 2; T.C.A. (orig. ed.), §§ 11-604, 11-25-104.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-3-2209. Welcome centers and rest stops — Development of promotional content and training.

(a) It is the intent of the state to promote and facilitate Tennessee's natural beauty and bountiful attractions. To the extent permitted by federal laws and regulations and the requirements of the federal highway administrator, all welcome centers supervised by the department may have photographs, posters, maps, music, books and other items that illustrate Tennessee's unique heritage and wealth of endeavors, from the historic to the peculiar, the traditional to the frivolous. Each welcome center may place an emphasis on events and sites that are within a fifty-mile radius within Tennessee.

(b) The commissioner of tourist development shall develop promotional content and train staff members regarding all aspects of Tennessee life that are endearing to its citizens and captivating to its visitors. Emphasis may be placed on hidden treasures that a casual observer might miss, including natural sites such as waterfalls and caves, and man-made sites such as museums, seasonal events, and community celebrations. The commissioner of

tourist development is encouraged to make Tennessee's welcome centers a place for travelers to enjoy and linger as tired limbs are stretched and eyes are rested.

History.
Acts 2007, ch. 490, §§ 1, 2.

4-3-2210. Marketing of Reelfoot Lake as Tennessee Heritage Site.

The commissioner may strategically market Reelfoot Lake as a Tennessee Heritage Site for tourism development based on its geological history, natural resources, and other unique characteristics as funding may be available at the discretion of the commissioner.

History.
Acts 2019, ch. 443, § 2.

PART 23

DEPARTMENT OF TRANSPORTATION

4-3-2301. Creation.

There is hereby established the department of transportation.

History.
Acts 1972, ch. 829, § 3; T.C.A., § 4-309; modified.

Compiler's Notes.
The department of transportation, created by this section and § 4-3-101, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

For additional provisions relating to the termination of the department of transportation, see the Compiler's Notes under § 4-3-101.

Acts 2003, ch. 213, § 1 provided that in recognition of a growing public interest in improving the transportation planning process and customer service by the department of transportation, it is the intent of the general assembly to authorize the commissioner of transportation to reorganize the department as appropriate to address existing and future demands for improved services.

Cross-References.
Creation of the department of transportation, § 4-3-101.

4-3-2302. Commissioner — Qualifications — Appointment — Salary — Vacancy or absence.

(a) The administrator and head of the department shall be the commissioner of transportation, who shall be a person qualified by training and experience to perform the duties of the commissioner's office.

(b) The commissioner shall be appointed by the governor.

(c) The commissioner shall serve at the pleasure of the governor and shall receive a salary in accordance with § 8-23-101.

(d) In the event of death, resignation, temporary incapacity or removal of the commissioner, and prior to the appointment of the commissioner's successor, the governor may appoint a qualified employee of the department of transportation to serve as acting commissioner. The commissioner may appoint, during the commissioner's absence from the state, a qualified employee of the department to serve as acting commissioner for the duration of the absence. In either case, the acting commissioner shall have all the duties, functions and powers of the commissioner during the commissioner's absence

or incapacity, or until the commissioner's successor is duly qualified and appointed.

History.
Acts 1972, ch. 829, § 4; T.C.A., § 4-309; Acts 1981, ch. 264, § 25.

NOTES TO DECISIONS

1. Suit Against the State.
Where landowners brought a declaratory judgment action against the commissioner of the department of transportation in his official capacity, it was a suit against the state. Williams v. Nicely, 230 S.W.3d 385, 2007 Tenn. App. LEXIS 111 (Tenn. Ct. App. Feb. 28, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 621 (Tenn. June 25, 2007).

4-3-2303. Powers and duties of commissioner.

The commissioner has the power and duty to:

(1) Retain, employ and contract for the services of private and public consultants, research and technical personnel and procure by contract, consulting, research, technical and other services and facilities, whenever considered by the commissioner necessary or desirable in the performance of the functions of the department and whenever funds shall be available for those purposes;

(2) Establish and promulgate such rules and regulations governing the administration and operation of the department as may be deemed necessary by the commissioner and that are not inconsistent with the laws of this state;

(3) Maintain such facilities throughout the state as may be required for the effective and efficient operation of the department;

(4) Apply for and accept on behalf of the state any grant from the federal government to be used for any of the purposes of the department, and to comply with any conditions and limitations annexed;

(5) Supervise, direct and account for the administration and operation of the department and its employees;

(6) Organize the department into such units as the commissioner deems necessary to carry out the duties and functions imposed on the commissioner and the department. Any reorganization or creation or elimination of any units after July 1, 2003, shall be jointly reviewed by the officers of the house of representatives and senate finance, ways and means committees and the officers of the transportation committee of the house of representatives and the transportation and safety committee of the senate, it being the intent of the general assembly to recognize the organization of the department as of July 1, 2003, as the legal organization of the department;

(7) Appoint such personnel as may be necessary for the administration and operation of the department, within reasonable budgetary limitations;

(8) Delegate any of the commissioner's powers, duties or functions to a departmental employee of the commissioner's choosing, except the commissioner's power to remove employees of the department or to fix their compensation;

(9) Undertake programs of transportation related to investigation, re-

search and operation of safe, adequate and efficient transportation modes, including, but not limited to, aeronautics, waterways, rails, highways and mass transit;

(10) Provide technical assistance and financial assistance, as it may become available, to other public agencies;

(11) Develop and implement a continuing, comprehensive, and multimodal statewide transportation planning process that is consistent with the transportation planning requirements of the United States department of transportation and includes the development and periodic updating of a long-range statewide transportation plan, including: consideration and provision, as applicable, of elements and connections of and between highway, rail, mass transit, waterway, aviation, pedestrian and bicycle facilities; consideration of operations and maintenance of those facilities; and a review of projected costs and anticipated revenues;

(12) Plan, propose and coordinate transportation related policies, activities and programs among state departments and agencies and within the state;

(13) Prepare and report annually to the general assembly an updated multimodal transportation improvement program for the state, which shall be based on the long-range statewide transportation plan and shall provide the basis for annual funding recommendations by the commissioner and for annual expenditures by the department;

(14) Administer a statewide rideshare/car pooling program, including the establishment of appropriate rideshare parking locations on the perimeter of major urban areas or other areas needing such facilities, as determined by the commissioner;

(15) Document and evaluate the cost-effectiveness of contracting maintenance work with private vendors;

(16) Develop a plan to establish and maintain long-term, cost-effective highway condition ratings;

(17) Develop, document and demonstrate to the general assembly a system of accountability over transportation field units;

(18) Exercise all duties, responsibilities and powers granted the department in title 65, chapters 3, 11, and 12, and establish and promulgate rules and regulations necessary for the administration and enforcement of title 65, chapters 3, 11, and 12; and

(19) Solely at the commissioner's discretion, upon awarding federal transportation enhancement grant funds to be used for the acquisition, preservation or protection of civil war battlefield sites or related properties or easements, the commissioner may contract directly with any established and nationally recognized nonprofit organization dedicated to the preservation of civil war battlefields; provided, that the commissioner finds that the organization complies with federal eligibility requirements for grantees of such enhancement grant funds.

History.

Acts 1972, ch. 829, § 5; 1973, ch. 140, § 3; T.C.A., § 4-309; Acts 1981, ch. 264, § 24; 1983, ch. 429, § 10; 1986, ch. 541, § 1; 1987, ch. 76, §§ 3, 4; 1995, ch. 305, § 63; 2003, ch. 213, § 2; 2007, ch. 41, §§ 1, 2; 2010, ch. 960, § 1; 2013,

ch. 236, § 89.

Compiler's Notes.

For transfer of the rest area system, excluding the rest area in Smith County, in the department of tourist development and its related functions to the department of transportation, see Executive Order No. 44 (February 4, 1991).

Cross-References.

Duties of commissioner, § 54-1-105.

Highways, title 54.

Ramp installation at crosswalks, department to furnish specifications, § 7-31-114.

Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

Attorney General Opinions.

Reorganization of department of transportation, OAG 00-037, 2000 Tenn. AG LEXIS 37 (3/7/00).

Commissioner's authority to investigate safe, adequate and efficient modes of transportation does not give him the regulatory power to investigate alleged violations of the Tennessee Water Quality Control Act, OAG 04-035, 2004 Tenn. AG LEXIS 35 (3/09/04).

4-3-2304. Accessible transportation and mobility.

(a) This section shall be known and may be cited as the "Tennessee Accessible Transportation and Mobility Act of 2020."

(b) At the direction of the commissioner, the department shall create and administer an office within the department to be known as the office of accessible transportation and mobility.

(c) The purpose of the office is to provide resources and expertise for expanding and improving accessible transportation and mobility across the state at the direction of the commissioner.

(d) All appropriate state and local agencies shall coordinate with the department of transportation toward the goal of expanding and improving accessible transportation and mobility across the state.

(e) The office shall consult with stakeholders, selected by the department, who are consumers of accessible transportation as well as professionals with experience in transportation, disability, and aging to produce the following on or before March 31, 2021:

(1) A detailed statement on the office's mission and scope of responsibilities;

(2) A five-year strategic plan to guide the office's work; and

(3) A report to the chairs of the transportation committee of the house of representatives and the transportation and safety committee of the senate and to the public regarding needs for mobility and accessible transportation in the state, which is to be submitted annually thereafter.

History.

Acts 2020, ch. 600, § 1.

Compiler's Notes.

Former § 4-3-2304 (Acts 1923, ch. 7, § 33; Shan. Supp., § 373a85b; Code 1932, § 308; Acts 1937, ch. 33, §§ 54, 55; mod. C. Supp. 1950, § 255.54; Acts 1959, ch. 9, § 3; 1972, ch. 829, §§ 3-6, 20, 23; 1973, ch. 140, § 3; T.C.A. (orig. ed.), § 4-309), concerning the creation, powers and duties of the various bureaus of the department of transportation, was repealed by Acts 1981, ch. 264, § 3. For present provisions, see § 4-3-2303.

4-3-2305. Compliance.

(a) The department of transportation shall comply with all the terms and conditions of the disadvantaged business enterprise and historically underuti-

lized business enterprise provisions of the federal Transportation Equity Act for the 21st Century (23 U.S.C. § 101 et seq.)

(b) In addition to subsection (a), the department shall continue to comply with the good faith efforts requirements of § 67-3-904, which apply to the revenue generated from the 1986 and 1989 gasoline tax increases with respect to disadvantaged business enterprises or women business enterprises.

(c)(1) It being in the public interest and for a public purpose to support the participation of small businesses in department contracts, the department is authorized to establish the programs described in this section to assist small businesses to participate in department contracts, either as a prime or as a subcontractor. Small business shall be defined to include certified disadvantaged business enterprises as defined by 49 CFR Part 26, and business enterprises that satisfy all the requirements of a disadvantaged business enterprise under Part 26, including but not limited to, requirements of business size and net worth of owners, other than the requirement that the owners of the business qualify as members of the groups identified in subsection 2 of the definition of socially and economically disadvantaged individuals in 49 CFR Part 26.5. The commissioner may promulgate rules to implement the purpose of this section.

(2) The department is authorized to conduct studies to determine whether any group consisting of socially and economically disadvantaged individuals as defined in 49 CFR Part 26 is underutilized on state funded construction projects. In the event underutilization is documented and any other necessary findings are made, the commissioner may elect to set appropriate goals on state funded projects.

(3) The department is authorized to offer construction management development programs for small businesses and may charge a fee for the programs.

(4) The department is authorized to create and implement a surety bond guarantee program for small businesses to act as subcontractors on department construction projects. The state may guarantee up to ninety percent (90%) of a surety bond amount of two hundred fifty thousand dollars ($250,000) or less and up to eighty percent (80%) of a surety bond amount greater than two hundred fifty thousand dollars ($250,000), which surety bond is provided by an approved surety. The department may be entitled to receive a fee from a participating small business and may require any participating small business to set aside part of the subcontract amount as security for the surety bond or guarantee, or both. The department is required to promulgate rules to effectuate this subsection (c). In no event shall the total amount guaranteed under this program at any given time exceed five million dollars ($5,000,000). The department is authorized to expend funds from the highway fund to fund administrative expenses and fund any losses that may arise under the surety bond guarantee program.

(5) The commissioner shall report in writing the progress of this program to any member of the general assembly upon request. The report shall include, as a minimum, the number of users of the surety bond guarantee plan; the number of defaults and dollar loss; the cost of the program categorized by cost of administration; and the cost of on-the-job and classroom instruction.

History.
Acts 2000, ch. 820, § 2; 2004, ch. 641, § 1; 2013, ch. 236, § 88; 2013, ch. 308, § 20.

Compiler's Notes.
Acts 2000, ch. 820, § 1 provided that the act may be known and may be cited as the "Tennessee Minority and Women Business Enterprise Act of 2000".

Acts 2013, ch. 236, § 88 amended the first sentence of subdivision (c)(4), effective April 19, 2013, to read: "Annually, the commissioner shall report in writing the progress of this program to the speaker of the senate, the speaker of the house of representatives, the governor, members of the house of representatives transportation committee, and members of the transportation and safety committee of the senate." Acts 2013, ch. 308, § 20 rewrote the first sentence of subdivision (c)(4), effective July 1, 2013, to read: "The commissioner shall report in writing the progress of this program to any member of the general assembly upon request." The amendment by ch. 236 was in effect from April 19, 2013, until July 1, 2013. The amendment by ch. 308 took effect on July 1, 2013.

Cross-References.
Enhanced policymaking role for minority business, § 4-3-732.

Funds for contracts with disadvantaged business concerns or enterprises, § 54-1-124.

4-3-2306. Transportation Information Planning Act of 2001.

(a) This section shall be known and may be cited as the "Transportation Information Planning Act of 2001."

(b) The general assembly finds and declares that:

(1) Planning of Tennessee's transportation system is vital to ensuring that Tennessee's transportation needs are met now and in the future;

(2) The general assembly and the public's ability to be informed and involved in the planning and implementation of Tennessee's transportation system will add value to ensuring a transportation system that meets the needs of Tennessee's citizens; and

(3) With the emergence of new information technology, access to planning documentation can and should be made more readily available to the public.

(c) In order to facilitate the dissemination of information to the citizens of Tennessee, the department of transportation shall post the following documents or information on its internet website:

(1) A copy of the most current statewide transportation plan required pursuant to § 4-3-2303(13); and

(2) Information identifying and explaining the types of planning information available from the department and the procedures for obtaining each type of such information from the department.

History.
Acts 2001, ch. 248, § 1.

Compiler's Notes.
The URL of the website for the Tennessee department of transportation is tn.gov/tdot.

4-3-2307. Travel and tourism signage programs.

(a) The commissioner is authorized to develop guidelines for municipal tourism/wayfinding informational signage programs. Such guidelines may include, but are not limited to, construction, placement and safety standards. The commissioner is urged to consult with interested municipalities in the development of this program. Such municipalities may participate in the development of such guidelines; provided, that nothing in this section shall be

construed as requiring any municipality to participate in, or undertake construction of, a municipal tourism/wayfinding information signage program.

(b) The commissioner of transportation is authorized to develop guidelines for optional county/municipal tourism/wayfinding informational signage programs within any municipality having a population in excess of one hundred fifty-five thousand (155,000), according to the 2000 federal census or any subsequent federal census, or within any county. Such guidelines may include, but are not limited to, construction, placement and safety standards. The commissioner is urged to consult with interested parties within any county or municipality desiring to participate in the development of this program. Such county or municipality may participate in the development of such guidelines; provided, that nothing in this subsection (b) shall be construed as requiring participation or to undertake construction of a county/municipal tourism/wayfinding information signage program.

(c) The department of transportation is hereby authorized to remove any signs from the federal interstate highway system within any participating county or municipality that were installed as a result of acts or resolutions of the Tennessee general assembly; provided that the entity or facility which is signed agrees in writing that the entity or facility's interstate guide sign and any associated ramp sign may be removed as part of the overall plan for the tourism/wayfinding informational signage program implemented by such county or municipality.

History.

Acts 2003, ch. 382, § 1; 2010, ch. 727, §§ 1, 2.

Compiler's Notes.

For tables of population of Tennessee municipalities, see Volume 13 and its supplement.

Acts 2003, ch. 382, § 2 provided that the commissioner is authorized to promulgate rules and regulations to effectuate the provisions of this section.

Acts 2010, ch. 727, § 3 provided that all funds for the tourism/wayfinding informational signage program to which subsection (c) applies shall be provided by the respective local government of each participating county or municipality as to the signs within their program.

4-3-2308. Sponsorship program for welcome centers or rest areas.

(a) The department of transportation may establish a sponsorship program that allows a person or entity to sponsor a welcome center or rest area. The department may consult the departments of safety and tourist development in developing the program. The department may enter into a sponsorship for the welcome centers and rest areas and acknowledge a sponsor for the provision of services, products, or monetary contributions. The sponsorship program authorized in this section shall be distinct from, and shall not impair, any commercial advertising or any other tourism promotion program operated by the department of tourist development within welcome centers.

(b) A sponsorship program shall allow the installation of acknowledgment signs or markers, or the inclusion of sponsorship messages on existing signs or markers, within the rest areas and welcome centers, and on the portions of the interstate system and state system of highways and associated rights-of-way near the rest areas and welcome centers.

(c) The department shall prefer sponsorship by persons or entities that have a transportation purpose or otherwise promote highway safety.

(d) This section does not authorize signs or markers, or inclusion of

sponsorship messages, that advertise or promote commercial products or services through slogans, information on where to obtain the products and services, or other means.

(e) Sponsorship agreements, sponsorship policies, and signs or markers authorized under this section shall be consistent with:

(1) The Manual on Uniform Traffic Safety Devices;

(2) Order 5160.1A, Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way dated April 7, 2014, issued by the federal highway administration; and

(3) Other applicable state and federal laws and guidelines.

(f) A person or entity that enters into a sponsorship agreement with the department for a sponsorship shall pay the costs of:

(1) Manufacturing and installing a sign or marker;

(2) Placing a sponsorship message on a sign or marker; and

(3) Removing a sponsorship message, sign, or marker after the expiration or termination of the sponsorship agreement.

(g) The revenue generated from a sponsorship for any facilities on which federal-aid funds are used shall be deposited into the highway fund to be used solely for highway purposes. The revenue generated from a sponsorship for any facilities on which federal-aid funds are not used shall be deposited into the highway fund to be used to offset costs associated with providing the facility being sponsored or for highway purposes; provided, that the department is urged to use the revenue for highway purposes. This section does not authorize nor apply to commercial advertising in kiosks or any other tourism promotion program operated within welcome centers. The revenue generated from such commercial advertising and tourism promotion programs shall be allocated to the department of tourist development and used for purposes set forth in §§ 4-3-2201 – 4-3-2209.

(h) If the department establishes a sponsorship program, then the department shall adopt a sponsorship policy on sponsorship agreements that applies to all welcome centers and rest areas along the highways of the interstate system and state system of highways and associated highways and highway rights-of-way; provided, that provisions of the policy regarding welcome centers shall be developed in cooperation with the department of tourist development. The sponsorship policy shall:

(1) Be subject to approval by the federal highway administration;

(2) Include requirements that eligible sponsors comply with state and federal laws prohibiting discrimination based on race, color, national origin, age, sex, religion, disability, or any other category under applicable laws;

(3) Include language requiring the department to terminate a sponsorship agreement, if it determines the sponsorship agreement or acknowledgment sign or marker:

(A) Presents a safety concern;

(B) Interferes with the free and safe flow of traffic; or

(C) Is not in the public interest; and

(4) Describe the types of sponsors and sponsorship agreements that are acceptable and consistent with applicable state and federal laws.

(i) A sponsorship message:

(1) Shall identify the sponsor as a sponsor of the welcome center or rest area and include only the name and logo of the sponsor;

(2) Shall not include, identify, or promote:

(A) Alcohol or tobacco products;

(B) Adult-oriented establishments, as defined in § 7-51-1102 or § 7-51-1401;

(C) Political candidacies, political issue advocacy, or political campaign advertising; or

(D) Any unlawful conduct or activities;

(3) Shall not resemble an official traffic-control device, as defined in § 55-8-101; and

(4) Shall comply with federal outdoor advertising regulations in accordance with 23 U.S.C. § 131.

(j) In consultation with the departments of safety and tourist development, the department of transportation is authorized to promulgate rules necessary to effectuate this section. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 2015, ch. 454, § 1.

Compiler's Notes.
Former § 4-3-2308 (Acts 2008, ch. 981, § 1; repealed by Acts 2013, ch. 308, § 21, effective July 1, 2013), concerned human service transportation, the study of coordination of resources, and inventory of grants or expenditures.

4-3-2309. Commercial advertising on the exterior of incident response HELP trucks.

(a) The department is authorized to allot space on the exterior of the incident response HELP trucks and enter into contracts for the purpose of obtaining commercial sponsorship for the HELP program.

(b) All revenue generated from any commercial sponsorship authorized by this section shall be deposited in the highway fund to be used solely for transportation purposes.

(c) Such commercial sponsorship shall not include, identify or promote:

(1) Alcohol or tobacco products;

(2) Adult-oriented establishments, as defined in § 7-51-1102 or § 7-51-1401;

(3) Political candidacies, political issue advocacy, or political campaign advertising as prohibited in § 2-19-144; or

(4) Any unlawful conduct or activities.

(d) The department shall prefer sponsorship by organizations that have a transportation purpose or otherwise promote highway safety.

(e)(1) The sponsorship message shall identify the sponsor as a sponsor of the HELP program and otherwise shall include only the name and logo of the sponsor.

(2) The sponsorship message shall not be located on the front of the vehicle, including the front of the utility compartment, or on the cab of the vehicle, including the doors.

(3) The sponsorship message may be located on the storage compartment doors on either side of the utility compartment or on the back of the vehicle,

excluding the message board or arrow board.

(4) The logo of the sponsor shall not exceed four hundred (400) square inches in size, and the lettering identifying the sponsor shall not exceed eight inches (8″) in height.

(f) In consultation with the department of safety, the department of transportation is authorized to promulgate rules and regulations or adopt policies as needed to effectuate this section.

History.
Acts 2011, ch. 143, § 1.

Compiler's Notes.
Acts 2011, ch. 144, § 1 purported to add a new section concerning commercial advertising on the Tennessee 511 system as § 4-3-2309. Since Acts 2011, ch. 143, § 1 added § 4-3-2309, ch. 144 was added as § 4-3-2310.

Acts 2011, ch. 198, § 1 purported to add a new section concerning a special committee to study improvement of transportation services as § 4-3-2309. Since Acts 2011, ch. 143 § 1 added § 4-3-2309, ch. 198 was added as § 4-3-2311.

4-3-2310. Commercial advertising on the Tennessee 511 system.

(a) The department is authorized to obtain commercial sponsorship of the 511 system and to enter into contracts for this purpose.

(b) All revenue generated from any commercial sponsorship authorized by this section shall be deposited in the highway fund to be used solely for transportation purposes.

(c) Such commercial sponsorship shall not include, identify or promote:

(1) Alcohol or tobacco products;

(2) Adult-oriented establishments, as defined in § 7-51-1102 or § 7-51-1401;

(3) Political candidacies, political issue advocacy, or political campaign advertising, as prohibited in § 2-19-144; or

(4) Any unlawful conduct or activities.

(d) The department shall prefer sponsorships by organizations which have a transportation purpose or otherwise promote highway safety.

(e) In consultation with the department of safety, the department of transportation is authorized to promulgate rules and regulations or adopt policies as needed to effectuate this section.

(f) Sponsorship of the 511 system shall be limited to identification of sponsors of a traffic information message. Sponsors' recorded messages shall be not more than fifteen (15) seconds and may precede or follow the traffic information message. The commissioner of transportation or the commissioner's designee shall review and approve all recorded commercial sponsorship messages.

History.
Acts 2011, ch. 144, § 1.

Compiler's Notes.
Acts 2011, ch. 144, § 1 purported to add a new section concerning commercial advertising on the Tennessee 511 system as § 4-3-2309. Since Acts 2011, ch. 143, § 1, added § 4-3-2309, ch. 144 was added as § 4-3-2310.

4-3-2311. Special committee to study improvement of transportation services.

(a) For purposes of this section, "transportation services" means public transportation services and transportation services for populations needing specialized assistance.

(b)(1) There is hereby created a special committee, to be known as "the coordination committee," to study the improvement of the methods of delivery and coordination of transportation services by state departments and agencies, as well as transportation provided by local government and nonprofit agencies that are funded by state departments and agencies; the effectiveness of existing services and the need for new types of services; improvements in the effective use of existing funding by state departments and agencies to maximize financial efficiency; reduction of barriers to the effective funding of transportation services; identification of new sources of transportation funding; and improvement of universal mobility for Tennessee citizens and visitors.

(2) The coordination committee shall consist of the following persons and organizations:

(A) One (1) member of the transportation and safety committee of the senate and one (1) other member of the senate, each to be selected by the speaker of the senate;

(B) One (1) member of the transportation committee of the house of representatives and one (1) other member of the house of representatives, each to be selected by the speaker of the house of representatives;

(C) Two (2) representatives of the department of transportation;

(D) One (1) representative of the department of human services;

(E) One (1) representative of the department of children's services;

(F) One (1) representative of the department of finance and administration;

(G) One (1) representative of the Tennessee department of veterans services;

(H) One (1) representative of the bureau of TennCare;

(I) One (1) representative of the commission on aging and disability;

(J) One (1) representative of the Tennessee Public Transportation Association; and

(K) A representative from each department or state agency as deemed necessary by the department of transportation.

(3) The lead agency for supporting and staffing the coordination committee shall be the department of transportation.

(4) All appropriate state agencies shall provide assistance to the coordination committee upon request.

(5) All legislative members of the coordination committee who are duly elected members of the general assembly shall remain members of such committee until the committee reports its findings and recommendations to the general assembly. Nonlegislative members shall serve without compensation.

(6) The coordination committee shall only meet on days when the house of

representatives and the senate are otherwise meeting in session or committee.

(c) Departmental representatives on the coordination committee shall represent such department's policy and operational levels. The coordination committee's purpose shall be to regularly coordinate the efforts of each agency as follows:

(1) Improve transportation coordination;

(2) Improve methods of delivery of passenger transportation;

(3) Improve effectiveness of service and improve overall financial efficiency;

(4) Improve universal mobility for Tennessee citizens and visitors; and

(5) Identify opportunities and barriers, and recommend solutions to improve transportation coordination.

(d) The coordination committee shall promote public education about the availability and use of transportation services in this state and provide such information to all departments in state government and to the general public.

(e) The coordination committee is directed to create a strategic transportation coordination plan that will guide its work for the next five (5) years. Such plan shall be updated every five (5) years.

(f) The department of transportation shall present an executive summary for the coordination committee to the transportation and safety committee of the senate and transportation committee of the house of representatives annually.

(g) It is the intent of the general assembly that all departments of state government effectuate this section using existing resources.

History.

Acts 2011, ch. 198, § 1; 2013, ch. 236, §§ 88, 90; 2015, ch. 24, § 7.

Compiler's Notes.

Acts 2011, ch. 198, § 1 purported to add a new section concerning a special committee to study improvement of transportation services as § 4-3-2309. Since Acts 2011, ch. 143 § 1 added § 4-3-2309, ch. 198 was added as § 4-3-2311.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

4-3-2312. Power of commissioner to enter into contracts for the purpose of stabilizing expenses for purchase of gasoline, diesel, or other fuels. [Expiration of section, see subsection (e).]

(a) Notwithstanding any other law to the contrary, the commissioner of transportation may enter into a negotiated contract or contracts with a bank, investment bank or other similar financial institution for the purpose of stabilizing the net expense of the department of transportation in the purchase of gasoline, diesel, or other fuels for the department's own use.

(b) The contracts entered into under this section may include, without limitation, financial instruments commonly referred to as hedges, futures, options, swap transactions, or any similar financial instrument for cost

stabilization. The contracts authorized herein shall not be deemed contracts for services subject to former § 12-4-109 [See the Compiler's Notes].

(c) Notwithstanding any other law to the contrary, the contracts authorized in this section may be procured in such manner pursuant to policy and executed in such form, all as approved by the state chief procurement officer, with the approval of the state funding board. Such policy shall provide, at a minimum, that the initial selection of financial institutions for the purpose of entering into such contracts shall be conducted by a public solicitation and request for qualifications, including credit worthiness and other factors as determined by the state chief procurement officer, with the approval of the state funding board.

(d) When entering into any contract authorized under this section, the written contract shall provide that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation as may bear a reasonable relationship to the transaction; provided, however, that any suit, action, or proceeding at law or in equity against this state shall be brought solely in any court of competent jurisdiction in Davidson County.

(e) The authority granted under this section is in addition to, and supplemental to, any existing authority granted under any other law but shall expire on June 30, 2016.

History.
Acts 2012, ch. 683, § 1; 2018, ch. 628, § 4.

Compiler's Notes.
Former § 12-4-109, referred to in this section, was recodified by Acts 2013, ch, 403, effective July 1, 2013. Provisions similar to former § 12-4-109 were transferred to other sections within title 12, ch. 3, parts 1 and 3. See the table of disposition in the compiler's notes under § 12-4-101.

4-3-2313. Aeronautics economic development fund.

(a) There is hereby created a segregated account within the state treasury to be known as the aeronautics economic development fund.

(b) The aeronautics economic development fund is composed of:

(1) Funds appropriated by the general assembly for the aeronautics economic development fund; and

(2) Gifts, grants, and other donations received by the department of transportation for the aeronautics economic development fund.

(c) Money in the aeronautics economic development fund may be used by the department of transportation for program administration, marketing expenses, and program evaluation; provided, however, such expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(d) Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the aeronautics economic development fund or transfer any part of the fund to the revenue fluctuation reserve.

(e) Moneys in the aeronautics economic development fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the aeronautics economic development fund, and interest accruing on

investments and deposits of such fund shall be returned to such fund and remain part of the aeronautics economic development fund.

(f) It is the legislative intent that new commitments made by the commissioner of transportation for grants from the aeronautics economic development fund shall not exceed the appropriations made for the purposes of the aeronautics economic development fund. It is further the legislative intent that in each fiscal year the aeronautics economic development fund be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year shall not exceed any available reserves and appropriations of the aeronautics economic development fund.

History.
Acts 2016, ch. 1027, § 1.

4-3-2314. Grants from aeronautics economic development fund.

(a) Grants from the aeronautics economic development fund created by § 4-3-2313 may be made in all counties where the commissioner of transportation determines that such grants will have a direct impact on employment and investment opportunities in the future.

(b) Grants from the aeronautics economic development fund may be made only to local governments or their economic development organizations, other political subdivisions of the state, including airport authorities, or any subdivision of state government.

(c) Grants from the aeronautics economic development fund may be used to facilitate economic development activities related to aeronautics and aeronautics related programs and activities administered by local governments or their economic development organizations, other political subdivisions of the state, including airport authorities, or any subdivision of state government.

History.
Acts 2016, ch. 1027, § 2.

PART 24

DEPARTMENT OF THE TREASURY

4-3-2401. Creation — State treasurer as chief officer.

There is created the department of the treasury through which the state treasurer, who shall be the chief officer of the department, shall administer the duties imposed upon the state treasurer by law.

History.
Acts 1959, ch. 9, § 9; T.C.A., § 4-339; modified.

Cross-References.
Administration of board of claims, §§ 9-8-101, 9-8-102.

State treasurer as constitutional officer, appointment, Tenn. Const., art. VII, § 3.

4-3-2402. Department and treasurer subject to general laws.

The state treasurer, as the chief officer of the department, and the department shall be subject to all laws applying generally to heads of administrative departments and to administrative departments, not inconsistent with the state treasurer's status as a constitutional officer.

History.
Acts 1959, ch. 9, § 9; T.C.A., § 4-339.

4-3-2403. Division of retirement — Retirement systems attached to division.

(a)(1) A division of retirement is hereby created in the department of the treasury.

(2) The division shall attend to all duties heretofore performed by the personnel of such retirement systems as shall by law be attached to it, except those discretionary duties performed directly by the boards administering such retirement systems.

(3) The authority of retirement systems attached to the division of retirement to employ personnel is hereby abolished, but the authority of boards administering retirement systems is not otherwise impaired hereby.

(b) The following retirement systems are hereby attached to the division of retirement:

(1) The Tennessee consolidated retirement system;

(2) The Tennessee teachers' retirement system;

(3) The Tennessee state retirement system;

(4) The attorneys general retirement system of Tennessee; and

(5) The Tennessee judges' retirement system.

History.
Acts 1959, ch. 9, § 9; impl. am. Acts 1969, ch. 209, § 1; impl. am. Acts 1969, ch. 210, § 1; T.C.A., § 4-340; Acts 1983, ch. 342, § 1; 2013, ch. 170, § 19.

Compiler's Notes.
The retirement systems specified in subsection (b) have been repealed or superseded, but remain effective to define and protect existing rights. See the Appendix ("Superseded Retirement Systems") to title 8.

Cross-References.
Reorganization of divisions, § 4-4-101.

4-3-2404. State building commission personnel.

There shall be attached to the department of treasury personnel employed by the state building commission for all administrative purposes, except the discharge of the duties and functions directly required of such personnel by the state building commission.

History.
Acts 2017, ch. 87, § 2.

PART 25

DEPARTMENT OF VETERANS SERVICES

4-3-2501. Creation.

There is hereby created the department of veterans services.

History.

Acts 1945, ch. 40, § 1; 1959, ch. 9, § 6; 1975, ch. 249, § 1; modified; 2015, ch. 24, §§ 1, 7.

Compiler's Notes.

The department of veterans services, created by this section and § 4-3-101, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Acts 2015, ch. 24, § 8 provides that the department of veterans services may exhaust the existing stock of office products having the designation of the department or commissioner of veterans' affairs prior to ordering new office products having the designation authorized by this act.

Cross-References.

Creation of the department of veterans services, § 4-3-101.

War records furnished to department of veterans services by war records bureau, § 58-4-101.

4-3-2502. Commissioner.

The department of veterans services is under the charge and general supervision of the commissioner of veterans services.

History.

Acts 1945, ch. 40, § 4; 1959, ch. 9, § 6; 1975, ch. 249, § 2; modified; 2015, ch. 24, §§ 1, 7.

Compiler's Notes.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

4-3-2503. Powers and duties.

The department of veterans services and the commissioner of veterans services are vested with all the authority, powers and duties formerly imposed upon the staff division of veterans' affairs and the director of the department of veterans' affairs and as prescribed in title 58, chapter 3.

History.

Acts 1959, ch. 9, § 6; 1975, ch. 249, § 3; T.C.A., § 4-331; 2015, ch. 24, §§ 2, 7.

Compiler's Notes.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Acts 2015, ch. 24, § 8 provides that the department of veterans services may exhaust the existing stock of office products having the designation of the department or commissioner of veterans' affairs prior to ordering new office products having the designation authorized by this act.

Cross-References.

Commission on aging and disability, commissioner as member, § 71-2-104.

Veterans' cemeteries, title 46, ch. 6.

4-3-2504. Youth programs — Department's activity restricted.

The department of veterans services is prohibited from developing, coordinating, administering, supervising or in any way assisting in the implementation or operation of the Tennessee Tomorrow Program or any other youth-in-public-service program. No funds that may be appropriated, transferred or otherwise made available to the department shall be expended or in any way utilized by the department on behalf of such programs.

History.
Acts 1981, ch. 45, § 2; 2015, ch. 24, §§ 1, 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

PART 26

[RESERVED]

PART 27

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

4-3-2701. Creation — General functions.

(a) There is created the department of intellectual and developmental disabilities.

(b) The general functions of the department are to coordinate, set standards for, plan for, monitor, and promote the development and provision of services and supports to meet the needs of persons with intellectual and developmental disabilities through the public and private sectors in this state as set out in applicable provisions of title 33.

History.
Acts 2010, ch. 1100, § 10.

Compiler's Notes.
The department of intellectual and developmental disabilities, created by this section and § 4-3-101, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2010, ch. 1100, § 147 provided that a transition team shall be established within the division of intellectual disability services to facilitate the transition of the division into the department of intellectual and development disabilities. The transition team shall be led by the deputy commissioner of the division of intellectual disability services and shall consist of such other persons deemed necessary by the deputy commissioner as integral in establishing the department of intellectual and developmental disabilities. The transition team is encouraged to seek input from the various effected stakeholders and any past deputy commissioner of the division of intellectual disability services. The deputy commissioner shall call meetings of the transition team as needed; provided that at least one (1) meeting shall occur prior to August 1, 2010. The transition team shall review Acts 2010, ch. 1100 to facilitate transition and may make recommendations for amendments to Act 2010, ch. 1100 in furtherance of establishing the department of intellectual and developmental disabilities prior to the legislative bill filing cut off dates established for the first session of the one hundred seventh general assembly.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to

effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2702. Commissioner.

(a) The department of intellectual and developmental disabilities shall be in the charge of a commissioner, who shall be appointed by the governor in the same manner as are other commissioners and who shall have the same official status as other commissioners.

(b) The commissioner shall hold office at the pleasure of the governor, and the commissioner's compensation shall be fixed by the governor and paid from the appropriation available to such department.

(c) The commissioner shall be appointed without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership, and must have a recognized graduate degree as a psychiatrist, doctor of medicine, behavioral scientist, social scientist, educator or other profession involved with human development, human welfare or human relations, with experience in public administration; and shall further have a professional background in the area of intellectual or developmental disabilities, and an understanding of the conditions of human development, intellectual or developmental disabilities, human welfare and social services.

(d) No person shall be eligible to appointment as commissioner unless such person is at least thirty (30) years of age and has five (5) years of administrative experience, including at least three (3) years of full time management experience in private enterprise, private practice or public service.

History.

Acts 2010, ch. 1100, § 10; 2011, ch. 158, § 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2703. Powers and duties.

(a) The department of intellectual and developmental disabilities has jurisdiction and control over the intellectual and developmental disabilities facilities of the state, regardless of the names by which the facilities are known.

(b) The department, through its appropriate officials, has the duty and power to provide the best possible care for persons with intellectual and developmental disabilities in the state by improving existing facilities, by developing future facilities and programs, and by adopting a preventive program for intellectual and developmental disabilities, all as provided in title 33, with control over those services and supports as set out in title 33, chapter 5.

(c) Licensing of these facilities shall be the responsibility of the department of intellectual and developmental disabilities under title 33, chapter 2, part 4.

History.
Acts 2010, ch. 1100, § 10; 2012, ch. 1010, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2704. Construction with federal law, rule or regulation.

Any provision of chapter 1100 of the Public Acts of 2010, or application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

History.
Acts 2010, ch. 1100, § 148.

Compiler's Notes.
Acts 2010, ch. 1100, § 146 provided that a transition team shall be established within the division of intellectual disability services to facilitate the transition of the division into the department of intellectual and development disabilities. The transition team shall be led by the deputy commissioner of the division of intellectual disability services and shall consist of such other persons deemed necessary by the deputy commissioner as integral in establishing the department of intellectual and developmental disabilities. The transition team is encouraged to seek input from the various effected stakeholders and any past deputy commissioner of the division of intellectual disability services. The deputy commissioner shall call meetings of the transition team as needed; provided that at least one (1) meeting shall occur prior to August 1, 2010. The transition team shall review Acts 2010, ch. 1100 to facilitate transition and may make recommendations for amendments to Act 2010, ch. 1100 in furtherance of establishing the department of intellectual and developmental disabilities prior to the legislative bill filing cut off dates established for the first session of the one hundred seventh general assembly.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2705. Transfer to the department of intellectual and developmental disabilities.

(a) Notwithstanding any law to the contrary, on January 15, 2011, all duties of the department of mental health and substance abuse services and the department of finance and administration, whose duties fall within those duties required to be performed by the department of intellectual and developmental disabilities pursuant to chapter 1100 of the Public Acts of 2010, shall be transferred to the department of intellectual and developmental disabilities.

(b) Notwithstanding any law to the contrary, on January 15, 2011, all employees of the department of mental health and substance abuse services and the department of finance and administration, whose duties fall within those duties transferred to the department of intellectual and developmental disabilities pursuant to chapter 1100 of the Public Acts of 2010, shall be transferred to the department of intellectual and developmental disabilities.

(c) All reports, documents, surveys, books, records, papers or other writings in the possession of the department of mental health and substance abuse services or the department of finance and administration with respect to

administering the provisions of title 33, chapter 5, assigned to the department of intellectual and developmental disabilities by chapter 1100 of the Public Acts of 2010, shall be transferred to and remain in the custody of the department of intellectual and developmental disabilities. The transfer of all such reports, documents, surveys, books, records, papers or other writings shall be subject to any necessary consent by a federal court due to the requirements of litigation.

(d) All leases, contracts and all contract rights and responsibilities in existence with the department of mental health and substance abuse services and the department of finance and administration with respect to the duties transferred by this act to the department of intellectual and developmental disabilities shall be preserved and transferred to the department of intellectual and developmental disabilities.

(e) All assets, liabilities and obligations of the department of mental health and substance abuse services and the department of finance and administration with respect to the duties transferred by chapter 1100 of the Public Acts of 2010 to the department of intellectual and developmental disabilities shall become the assets, liabilities and obligations of the department of intellectual and developmental disabilities.

History.
Acts 2010, ch. 1100, § 149; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Cross-References.
Creation of the department of mental health and substance abuse services, §§ 4-3-101, 4-3-1601.

4-3-2706. Continuing effect of contracts and leases.

(a) Contracts or leases entered into prior to January 15, 2011, with respect to any program or function transferred to the department of intellectual and developmental disabilities with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on January 15, 2011, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of intellectual and developmental disabilities, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) This part shall not be implemented in any manner which violates the prohibition against impairment of contract obligations as contained in the Constitution of Tennessee, Article I, § 20.

History.
Acts 2010, ch. 1100, § 150.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commis-

sioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2707. Authority of the department.

On January 15, 2011, the department of intellectual and developmental disabilities, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities outlined in chapter 1100 of the Public Acts of 2010 or assigned to the department of intellectual and developmental disabilities by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

History.
Acts 2010, ch. 1100, § 151.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2708. Continuing effect of current rules, regulations, orders, decisions and policies.

All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by an agency of state government whose functions have been transferred under chapter 1100 of the Public Acts of 2010 to the department of intellectual and developmental disabilities shall remain in full force and effect and shall hereafter be administered and enforced by the department of intellectual and developmental disabilities. To this end, the department of intellectual and developmental disabilities, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

History.
Acts 2010, ch. 1100, § 152.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2709. Construction of part.

Nothing in this part shall be construed as expanding or reducing programs or services or as expanding or reducing eligibility for such programs or services.

History.
Acts 2010, ch. 1100, § 154.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2710. No reimbursement for travel expenses — Exhaustion of existing supplies and materials.

(a) Notwithstanding any law to the contrary, members of the statewide planning and policy council for the department of intellectual and developmental disabilities created by § 33-5-601 shall serve without reimbursement for their actual travel expenses.

(b) All agencies effected by chapter 1100 of the Public Acts of 2010 shall exhaust existing supplies and materials, including letterhead, brochures and pamphlets, and shall make every effort to eliminate or minimize other expenses due to the creation of the department of intellectual and developmental disabilities.

History.
Acts 2010, ch. 1100, § 155.

Compiler's Notes.
Acts 2010, ch. 1100, § 157 provided that subsection (a) of this section shall take effect January 15, 2011, and that subsection (b) shall take effect June 23, 2010.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-3-2711. Council on autism spectrum disorder.

(a) There is created the Tennessee council on autism spectrum disorder to establish a long-term plan for a system of care for individuals with autism spectrum disorder and their families. The council shall make recommendations and provide leadership in program development regarding matters concerning all levels of autism spectrum disorder services, including, but not limited to, health care, education, and other adult, adolescent, and children's services.

(b) The council shall consist of the following members:

(1) The commissioner of intellectual and developmental disabilities or the commissioner's designee;

(2) The commissioner of health or the commissioner's designee;

(3) The commissioner of education or the commissioner's designee;

(4) The commissioner of human services or the commissioner's designee;

(5) The commissioner of commerce and insurance or the commissioner's

designee;

(6) The deputy commissioner of the bureau of TennCare or the deputy commissioner's designee;

(7) The commissioner of mental health and substance abuse services or the commissioner's designee;

(8) The executive director of the commission on children and youth or the executive director's designee;

(9) One (1) representative of the council on developmental disabilities; and

(10)(A) Nine (9) adults who have a diagnosis of autism spectrum disorder, or who are either family members or primary caregivers of persons with a diagnosis of autism spectrum disorder. Three (3) of these adult members shall represent each grand division of the state, and these persons shall be appointed by the governor after the governor receives nominations from Tennessee not-for-profit organizations that serve persons with autism spectrum disorder and their families;

(B) Initial appointees to the council pursuant to subdivision (b)(10)(A) shall serve staggered terms as follows:

(i) Persons appointed from the western grand division shall serve initial terms terminating on June 30, 2019;

(ii) Persons appointed from the middle grand division shall serve initial terms terminating on June 30, 2020; and

(iii) Persons appointed from the eastern grand division shall serve initial terms terminating on June 30, 2021;

(C) Following the expiration of members' initial terms as prescribed in subdivision (b)(10)(B), all appointments to the council shall be for terms of three (3) years and shall begin on July 1 and terminate on June 30, three (3) years thereafter;

(D) All members shall serve until the expiration of the term to which they were appointed and until their successors are appointed and qualified;

(E) Successors shall be appointed from the same grand divisions from which the members they are replacing were initially appointed;

(F) Members shall be eligible for reappointment to the council following the expiration of their terms, but shall serve no more than two (2) consecutive three-year terms.

(c) A majority of the members shall constitute a quorum. The governor shall appoint a chair from the members named to the council.

(d) The council shall meet quarterly and may meet more often upon a call of the chair.

(e) The council shall be administratively attached to the department of intellectual and developmental disabilities. All appropriate agencies of state government shall provide assistance to the council upon request of the council.

(f) If vacancies occur on the council for any cause, the vacancies shall be filled by the respective appointing authority within sixty (60) days for the duration of the unexpired term, if applicable.

(g) No council members shall receive compensation, nor shall members be entitled to reimbursement for actual travel and other expenses incurred in attending any meeting and in performing any duties prescribed in this part.

(h) The council shall:

(1) Assess the current and future impact of autism spectrum disorder on the residents of the state;

(2) Assess the availability of programs and services currently provided for early screening, diagnosis, and treatment of autism spectrum disorder;

(3) Seek additional input and recommendations from stakeholders, including, but not limited to, families, providers, clinicians, institutions of higher education, and those concerned with the health and quality of life for individuals with autism spectrum disorder;

(4) Develop a comprehensive statewide plan for an integrated system of training, treatment, and services for individuals with autism spectrum disorder;

(5) Ensure interagency collaboration as the comprehensive statewide system of care for individuals with autism spectrum disorder is developed and implemented;

(6) Coordinate available resources related to developing and implementing a system of care for individuals with autism spectrum disorder; and

(7) Coordinate state budget requests related to systems of care for individuals with autism spectrum disorder based on the studies and recommendations of the council.

History.
Acts 2017, ch. 86, § 1.

Compiler's Notes.
The Tennessee council on autism spectrum disorder, created by this section, terminates June 30, 2026. See §§ 4-29-112, 4-29-247.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

PART 28

NONPROFIT ORGANIZATION FOR SUPPORT AND ENHANCEMENT OF VOLUNTEER TENNESSEE

4-3-2801. Creation of a nonprofit citizen support organization.

In order to maintain and enhance the purposes, programs and functions of Volunteer Tennessee, including, but not limited to, overseeing federal grants and training services to support AmeriCorps, Learn and Serve America, the governor's Volunteer Stars awards and volunteer centers throughout the state, a nonprofit citizen support organization may be organized, and the commissioner of finance and administration, after approval of the board of directors of Volunteer Tennessee, may enter into agreements with such organizations for the purpose of providing support, financial and otherwise, to Volunteer Tennessee. The agreement shall be forwarded to the comptroller of the treasury for review and comment prior to the execution by an authorized state official. It is the legislative intent that any revenues generated by such citizen support organization be used to directly enhance Volunteer Tennessee's programs and services.

History.
Acts 2011, ch. 200, § 1.

4-3-2802. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Citizen support organization" means an organization which:

(A) Is organized as a nonprofit corporation, or is otherwise qualified to do business in Tennessee as a nonprofit corporation, pursuant to title 48, chapter 51;

(B) Is exempt from payment of federal income taxes pursuant to § 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)), as it may be amended from time to time;

(C) Is incorporated for purposes which are consistent with the goals, objectives, programs, responsibilities, and functions of Volunteer Tennessee as provided in Executive Order No. 42 of 2006, as determined by the governor; and

(D) Provides equal opportunities and membership to all persons regardless of race, color, national origin, sex, religion, age, handicap or any other constitutionally protected classification;

(2) "Commissioner" means the commissioner of finance and administration or the commissioner's designee or, in the event of the commissioner's or designee's absence or vacancy in the office of the commissioner, the deputy commissioner; and

(3) "Department" means the department of finance and administration.

History.
Acts 2011, ch. 200, § 1.

4-3-2803. Agreement with citizen support organization.

The commissioner, upon the approval of the board of directors of Volunteer Tennessee, may enter into an agreement with a citizen support organization for purposes consistent with this part if the commissioner determines it is in the best interest of Volunteer Tennessee.

History.
Acts 2011, ch. 200, § 1.

4-3-2804. Activities.

A citizen support organization which enters into an agreement with the commissioner may provide support, assistance, or cooperation to Volunteer Tennessee or Volunteer Tennessee events generally, including, but not limited to:

(1) Financial support, whether through donation, gift or otherwise, for Volunteer Tennessee programs, property or other program purposes;

(2) Volunteer personnel services or monetary contributions for adding positions for Volunteer Tennessee services;

(3) Equipment or other goods;

(4) The gift or donation of money to fund programs and exhibits or to procure equipment, materials, books, or services; and

(5) Exhibits and materials for display and related equipment and material.

History.
Acts 2011, ch. 200, § 1.

4-3-2805. Use of property and facilities of the Volunteer Tennessee program.

If the commissioner enters into an agreement with a citizen support organization, the commissioner may authorize such organization limited use, under such conditions as the commissioner may prescribe, of property or facilities of the Volunteer Tennessee program to carry out its specific support activities.

History.
Acts 2011, ch. 200, § 1.

4-3-2806. Assistance by the commissioner.

The commissioner, through the executive director of Volunteer Tennessee, may assist organizers of a citizen support organization with the creation of such organization and may provide technical assistance to the organization after its incorporation. However, it is the responsibility of the citizen support organization to ensure that the organization is lawfully incorporated and operating.

History.
Acts 2011, ch. 200, § 1.

4-3-2807. Audits — Books and records.

(a) All annual reports and all books of accounts and financial records of a citizen support organization shall be subject to audit annually by the comptroller of the treasury. With prior approval of the comptroller of the treasury, the audit may be performed by a licensed independent public accountant selected by the citizen support organization. If an independent public accountant is employed, the audit contract between the citizen support organization and the independent public accountant shall be on contract forms prescribed by the comptroller of the treasury. The cost of any audit shall be paid by the citizen support organization.

(b) The comptroller of the treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until approved by the comptroller of the treasury.

(c) One (1) copy of each audit shall be furnished to each member of the board of the citizen support organization, the department, and the comptroller of the treasury.

(d) The department and the comptroller of the treasury, or their designated representative, shall have access to the citizen support organization's books, records, and accounts whenever deemed necessary by either office.

(e) If the comptroller of the treasury determines that due to size or insignificant financial activities by a citizen support organization the requirement of this section for an audit is unnecessary or would be burdensome on a

citizen support organization, then the comptroller of the treasury may waive the required audit.

History.
Acts 2011, ch. 200, § 1.

4-3-2808. Gifts and donations.

(a) Any monetary gifts, donations, or other good or service received by the department or the commissioner from a citizen support organization and designated by the citizen support organization for the benefit of a Volunteer Tennessee program, shall be deposited directly to the account for the specific program of Volunteer Tennessee or to the general account for direct support to Volunteer Tennessee, shall not revert to the general fund at the end of the fiscal year and shall be retained in the account until expended, notwithstanding any law to the contrary.

(b) Any gifts of equipment, materials, or other personal property to Volunteer Tennessee shall be used solely at Volunteer Tennessee unless the commissioner determines such property should be used for another program.

History.
Acts 2011, ch. 200, § 1.

4-3-2809. Dissolution.

In the event a citizen support organization dissolves, then any funds remaining after dissolution shall be donated to Volunteer Tennessee and shall be deposited, as provided in Executive Order No. 42 of 2006, as determined by the governor, and applied for Volunteer Tennessee programs, services or facilities.

History.
Acts 2011, ch. 200, § 1.

4-3-2810. Rules and regulations.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 2011, ch. 200, § 1.

PART 29

[RESERVED]

PART 30

HUMAN TRAFFICKING ADVISORY COUNCIL

4-3-3001. Human trafficking advisory council — Purpose — Meetings.

The Tennessee bureau of investigation shall form a human trafficking advisory council, which shall convene on an as-needed basis to further develop and implement a state plan for the prevention of human trafficking; provided, that the council shall convene at least one (1) meeting each January regarding legislation.

History.
Acts 2015, ch. 510, § 1.

Code Commission Notes. Acts 2015, ch. 510, § 1 repealed and reenacted this part with one section. By authority of the Code Commission, the section has been codified as two sections, §§ 4-3-3001 and 4-3-3002.

Compiler's Notes.
Former part, §§ 4-3-3001 — 4-3-3005 (Acts 2013, ch. 464, § 1), concerning the human trafficking task force, was repealed and reenacted by Acts 2015, ch. 510, § 1, effective July 1, 2015.

For the Preamble to the act concerning the reformation of the entity examining the issue of human trafficking in Tennessee into the Human Trafficking Advisory Council under the direction of the Tennessee Bureau of Investigation, see Acts 2015, ch. 510.

Cross-References.
Offense of human trafficking, § 39-13-314.
Tennessee Human Trafficking Resource Center Hotline Act, § 39-13-313.
Trafficking in children, title 37, ch. 5, part 4.
Victims of human trafficking, § 71-1-135.

4-3-3002. Advisory council.

The Tennessee bureau of investigation shall appoint appropriate persons as leadership of the advisory council. Membership of the advisory council shall consist of:

(1) At least one (1) representative from the Tennessee bureau of investigation serving as leadership for the advisory council;

(2) One (1) representative from each of the following:

(A) Office of the attorney general and reporter;

(B) Department of labor and workforce development;

(C) Tennessee association of chiefs of police;

(D) Tennessee sheriffs' association;

(E) Department of safety;

(F) District attorneys general conference;

(G) District public defenders conference;

(H) Department of health;

(I) Department of children's services;

(J) Department of human services; and

(K) Alcoholic beverage commission;

(3) At least one (1) representative from each of the following entities, associations, or categories:

(A) A nongovernmental organization specializing in human trafficking;

(B) A member of a community or group disproportionately affected by human trafficking;

(C) An agency or group specializing in child services and runaway services;

(D) An academic researcher specializing in human trafficking; and

(E) A victim of human trafficking; and

(4) One (1) member of the house of representatives to be appointed by the speaker of the house of representatives and one (1) member of the senate to be appointed by the speaker of the senate.

History.
Acts 2015, ch. 510, § 1; 2020, ch. 602, § 1.

Code Commission Notes. Acts 2015, ch. 510, § 1 repealed and reenacted this part with one section. By authority of the Code Commission, the section has been codified as two sections, §§ 4-3-3001 and 4-3-3002.

Compiler's Notes.
Former part, §§ 4-3-3001 — 4-3-3005 (Acts 2013, ch. 464, § 1), concerning the human trafficking task force, was repealed and reenacted by Acts 2015, ch. 510, § 1, effective July 1, 2015.

For the Preamble to the act concerning the reformation of the entity examining the issue of human trafficking in Tennessee into the Human Trafficking Advisory Council under the direction of the Tennessee Bureau of Investigation, see Acts 2015, ch. 510.

Cross-References.
Offense of human trafficking, § 39-13-314.
Tennessee Human Trafficking Resource Center Hotline Act, § 39-13-313.
Trafficking in children, title 37, ch. 5, part 4.
Victims of human trafficking, § 71-1-135.

4-3-3003. Poster design — Display in welcome centers.

(a) The advisory council shall develop a poster design that brings awareness to human trafficking. The advisory council shall provide the completed poster design to the department of tourism for placement of the posters in each of Tennessee's welcome centers for the public to view.

(b) The department shall place such number of posters in the welcome centers as the department finds adequate to appropriately bring awareness to human trafficking. The department shall consider placing the posters on bathroom stall doors in the welcome centers.

History.
Acts 2021, ch. 268, § 1.

Effective Dates.
Acts 2021, ch. 268, § 2. April 30, 2021.

PARTS 31–48

[RESERVED]

PART 49

TENNESSEE VISUAL CONTENT MODERNIZATION ACT OF 2018

4-3-4901. Short title — Purpose.

This part shall be known and may be cited as the "Tennessee Visual Content Modernization Act of 2018" and is enacted for the purpose of providing incentive grants that encourage the production of films, movies, television

pilots and programs, computer-generated imagery and interactive digital media, and stand-alone post-production scoring and editing in this state.

History.
Acts 2006, ch. 916, § 2; 2018, ch. 919, § 5.

4-3-4902. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commission" means the Tennessee film, entertainment and music commission;

(2) "Commissioner" means the commissioner of economic and community development;

(3) "Department" means the department of economic and community development;

(4) "Executive director" means the director of the commission;

(5) "Film/TV fund" means the Tennessee film/television incentive fund;

(6) "Minority participant" means an individual who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin;

(7) "Production activities" means activities related to the production of entertainment properties;

(8) "Production company" means any person or entity that produces a film, movie, pilot, or show in this state; develops computer-generated imagery or interactive digital media, including audiovisual streaming services, in this state; or produces stand-alone post-production scoring and editing in this state;

(9) "State-certified production" means a film, movie, pilot, or show; computer-generated imagery or interactive digital media, including audiovisual streaming services; or stand-alone post-production scoring and editing, that meets the criteria established by the commission to receive an incentive grant; and

(10) "Tennessee motion picture and television incentive grant" or "incentive grant" means a grant for a state-certified production that is approved by the department to receive a grant based upon the recommendation of the executive director.

History.
Acts 2006, ch. 916, § 3; 2018, ch. 919, §§ 1, 2.

4-3-4903. Tennessee film/TV incentive fund.

(a) The film/TV fund is established as a separate account in the general fund and shall be administered by the department.

(b) The film/TV fund is composed of:

(1) Funds appropriated by the general assembly for the film/TV fund; and

(2) Gifts, grants and other donations received by the department or the commission for the film/TV fund.

(c)(1) Moneys in the film/TV fund shall be appropriated and expended to provide incentive grants to production companies for use in producing state-certified productions and may be used by the department to defray the

expenses of administering this section, including marketing expenses; provided, however, that the expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(2) The amount of each grant awarded pursuant to this section shall not exceed twenty-five percent (25%) of the total expenses incurred by a production company for a project; except, however, the department may award grants in excess of this amount if deemed appropriate by the department. It is the legislative intent that funding be appropriated each year in the general appropriations act for awarding grants. It is further the legislative intent that the department strive to award the maximum amount of incentive grants authorized by this section due to the amendments to § 67-4-2109(j) provided in chapter 1026, § 10 of the Public Acts of 2012, which added § 67-4-2109(j)(6).

(d) Moneys in the film/TV fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the film/TV fund, and interest accruing on investments and deposits of the fund shall be returned to the fund and remain part of the film/TV fund.

(e) Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the film/TV fund or transfer any part of the fund to the revenue fluctuation reserve.

(f) It is the intent of the general assembly that, to the extent practicable, moneys from the film/TV fund shall be used to provide incentive grants to production projects in all areas of the state.

(g) It is the intent of the general assembly that the commission shall actively encourage independent producers and minority participants to apply for incentive grants.

(h) Incentive grants from the film/TV fund shall not exceed the amount available in the fund at any time. No less frequently than biannually, the executive director shall report to the commissioner of finance and administration on the status of the incentive grant program, such report to include at least the following information: the amount of each grant awarded since the previous report and the name of the production company receiving the benefit of each grant, the total amount of outstanding grants and the total unobligated amount in the film/TV fund. A copy of each report shall be transmitted to the speaker of the house of representatives and the speaker of the senate, the chairs of the finance, ways and means committees of the senate and the house of representatives, the state treasurer, the comptroller of the treasury and the office of legislative budget analysis.

(i) The department shall promulgate rules and regulations as the department may deem necessary to effectuate the purposes of this part. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.

Acts 2006, ch. 916, § 4; 2010, ch. 1030, § 3; 2012, ch. 1026, §§ 8, 9; 2018, ch. 919, § 3.

PART 50

TENNESSEE FILM, ENTERTAINMENT AND MUSIC COMMISSION ACT OF 1987

4-3-5001. Short title.

This part shall be known and may be cited as the "Tennessee Film, Entertainment and Music Commission Act of 1987."

History.
Acts 1987, ch. 288 § 1.

Compiler's Notes.
Former part 50, §§ 4-3-5001 — 4-3-5004 (Acts 1980, ch. 848, §§ 1, 3-5; 1981, ch. 294, §§ 1-3), concerning the office of film and television production (formerly the Tennessee film, tape, and music commission) and the advisory commission thereto, was repealed by Acts 1987, ch. 288, § 1; Acts 1987, ch. 356, § 2(b); and Acts 1987, ch. 358, § 2(b).

4-3-5002. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Entertainment properties" means motion pictures, television programs, computer-generated imagery, interactive digital media, stand-alone post-production scoring and editing, sound recordings, and other audio, video, or audiovisual programs produced for distribution to the public;

(2) "Local government" means any county, municipality, city or other political subdivision of this state;

(3) "Production activities" mean activities related to the production of entertainment properties; and

(4) "Production facilities" mean streets, roads, highways, buildings, real or personal property or personal services.

History.
Acts 1987, ch. 288, § 1; 2018, ch. 919, § 4.

Compiler's Notes.
Former part 50, §§ 4-3-5001 - 4-3-5004 (Acts 1980, ch. 848, §§ 1, 3-5; 1981, ch. 294, §§ 1-3), concerning the office of film and television production (formerly the Tennessee film, tape, and music commission) and the advisory commission thereto, was repealed by Acts 1987, ch. 288, § 1; Acts 1987, ch. 356, § 2(b); and Acts 1987, ch. 358, § 2(b).

4-3-5003. Creation of commission — Executive director.

(a)(1) There is created within the office of the governor, the Tennessee film, entertainment and music commission.

(2) The commission shall be administered by an executive director who shall be appointed by the governor, whose compensation shall be established by the governor and who shall serve at the pleasure of the governor.

(3) For administrative purposes only, the commission shall be attached to the department of economic and community development.

(b) To effectuate the purposes of this part, the executive director may:

(1) Request from any branch, department, division, board, bureau, commission or other agency of the state or that receives state funds, and the same shall provide, such information as will enable the executive director to best serve the commission and perform the duties required by this part;

(2) Enter into agreements with any local government authorizing the commission to grant permission, in accordance with rules or regulations promulgated by the commission, for use of any production facilities within the control or jurisdiction of such local government for or in connection with production activities;

(3) Coordinate the use of production facilities within the control of any branch, department, bureau, commission or other agency of this state for or in connection with production activities and, after receipt of authorization from the appropriate official or officials, grant permission for the use of such facilities;

(4) Issue permits to producers of entertainment properties in accordance with rules and regulations promulgated by the commission; and

(5) Employ all necessary and appropriate personnel to carry out this part. Such personnel shall serve at the pleasure of the executive director.

History.
Acts 1987, ch. 288, § 1; 1991, ch. 357, § 5.

Compiler's Notes.
Former part 50, §§ 4-3-5001 - 4-3-5004 (Acts 1980, ch. 848, §§ 1, 3-5; 1981, ch. 294, §§ 1-3), concerning the office of film and television production (formerly the Tennessee film, tape, and music commission) and the advisory commission thereto, was repealed by Acts 1987, ch. 288, § 1; Acts 1987, ch. 356, § 2(b); and Acts 1987, ch. 358, § 2(b).

The Tennessee film, entertainment and music commission, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

4-3-5004. Members — Advisory council.

(a) The Tennessee film, entertainment and music commission shall be composed of nine (9) Tennessee citizens who have experience in and knowledge of the film, television or music industries. The commission shall be appointed by the governor to assist and counsel the governor on the subject for which it was created. One (1) member shall be appointed from each of the film, television and music segments of the industry. The membership of the commission shall also reflect the racial makeup of the state.

(b) The members of the commission shall be appointed for terms of four (4) years. In making the initial appointments, four (4) members shall be appointed for four-year terms and five (5) members shall be appointed for two-year terms. Thereafter, all appointments shall be for the full term. At least one (1) member of the commission shall reside in each grand division. Each member shall serve until the member's successor is appointed, and if a vacancy occurs on the commission, it shall be filled by the governor for the remainder of the unexpired term. The governor shall designate one (1) member of the commission to serve as chair for a one-year term. The chair may be reappointed to serve for one (1) additional term. No member may serve as chair for more than two (2) consecutive terms.

(c) The commission shall meet at least quarterly but may meet as often as the duties of such commission require.

(d) The commission members shall receive no compensation for their services on the commission but shall receive reimbursement for expenses incurred in attending meetings of the commission and for travel incident thereto, in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The governor shall appoint a film, entertainment and music advisory council to assist and advise the commission in the performance of its duties. Such council shall be appointed by the governor and the number of its members shall be determined by the governor. Each advisory council member shall be appointed for a two-year term and the duties of the council shall be established by the commission. The governor shall designate one (1) member of the advisory council to serve as chair for a one-year term. The chair may be reappointed to serve for one (1) additional term. No member may serve as chair more than two (2) consecutive terms.

History.
Acts 1987, ch. 288, §§ 1, 3; 1989, ch. 162, §§ 1, 2.

Compiler's Notes.
Former part 50, §§ 4-3-5001 - 4-3-5004 (Acts 1980, ch. 848, §§ 1, 3-5; 1981, ch. 294, §§ 1-3), concerning the office of film and television production (formerly the Tennessee film, tape, and music commission) and the advisory commission thereto, was repealed by Acts 1987, ch. 288, § 1; Acts 1987, ch. 356, § 2(b); and Acts 1987, ch. 358, § 2(b).

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-3-5005. Purpose of commission — Rules and regulations.

(a) The purposes of the Tennessee film, entertainment and music commission are to:

(1) Attract and bring to this state the production activities of film, television, record and other producers of entertainment properties;

(2) Develop increased production activities by those producers of entertainment properties already located in this state; and

(3) Coordinate the needs of the producers of entertainment properties with the needs of the citizens of this state and of the various departments of state and local governments.

(b) To accomplish the purposes of the film, entertainment and music commission, it has the authority to promulgate and enforce all necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 1987, ch. 288, § 1; 1991, ch. 357, § 6.

4-3-5006. Use and disclosure of information.

No member of the commission or the council shall use information gained as such member for personal gain or shall reveal such information to any person except in connection with commission or council activities.

History.
Acts 1987, ch. 288, § 2.

PART 51

STATE BOARD OF EQUALIZATION

4-3-5101. Members — Appointment — Terms.

(a) The state board of equalization shall consist of:

(1) The governor or one (1) individual appointed by the governor whose name shall be filed with the secretary of state and who shall sit on the board for the governor in the governor's absence as a voting member of the board;

(2) The treasurer;

(3) The secretary of state;

(4) The comptroller of the treasury;

(5) The commissioner of revenue;

(6) One (1) person named by the governor who has knowledge of and experience in tax assessments at the city level; and

(7) One (1) person named by the governor who has knowledge of and experience in tax assessments at the county level.

(b) Each appointment by the governor to fill the positions created by subdivisions (a)(6) and (7) shall be for a tenure or term of four (4) years, for each of the two (2) members who are not serving ex officio to be staggered with that of the other.

History.

Acts 1923, ch. 7, § 25; Shan. Supp., § 373a66; Code 1932, § 290; Acts 1933, ch. 92, § 1(14); 1937, ch. 33, § 52; 1939, ch. 11, § 33; C. Supp. 1950, § 255.52 (Williams, § 255.55); Acts 1957, ch. 228, § 1; impl. am. Acts 1959, ch. 9, §§ 4, 14; impl. am., Acts 1961, ch. 97, § 4; Acts 1974, ch. 771, § 1; T.C.A. (orig. ed.), § 4-307.

Compiler's Notes.

The state board of equalization, created by this section, terminates June 30, 2027. See §§ 4-29-112, 4-29-248.

4-3-5102. Chair and vice chair.

(a) The governor shall be chair of the board.

(b) At the meeting of the board on the second Monday in August of each year, the board shall elect one (1) of its members to serve as vice chair for one (1) year who shall preside at all meetings in the absence of the governor.

History.

Acts 1937, ch. 33, § 52; C. Supp. 1950, § 255.52 (Williams, § 255.55); Acts 1957, ch. 228, § 1; 1974, ch. 771, § 2; T.C.A. (orig. ed.), § 4-307.

4-3-5103. Powers and duties of board.

The state board of equalization has the following duties and functions to:

(1) Promulgate and publish an assessment manual or manuals for the appraisal, classification and assessment of property for use by local assessors of property in making their assessments of particular classes and parcels of property, including the assessment of the various kinds of personal property owned and used by corporations, partnerships and individuals engaged in business and professions for profit;

(2) Effect the assessment of all property in the state in accordance with

the Constitution of Tennessee and all statutory provisions. The state board shall exercise powers conferred upon it by law to the end that assessments in every taxing jurisdiction may be in accordance with the law;

(3) Prescribe educational and training courses for state and local assessing officials and issue certificates to such officials who successfully complete the training and requirements prescribed by the state board;

(4) Receive, hear, consider and act upon complaints and appeals made to the board regarding the valuation, classification and assessment of property in the state;

(5) Hear and determine complaints and appeals made to the board concerning exemption of property from taxation;

(6) Review assessments made by the comptroller of the treasury;

(7) Promulgate all necessary rules, regulations and procedures for implementation of tax relief to elderly low income taxpayers, homeowners totally and permanently disabled and disabled veterans, and make an annual summary of their findings available to members of the general assembly upon request; and

(8) Carry out such other duties as may be required by law.

History.

Acts 1974, ch. 771, § 2; T.C.A., § 4-307; Acts 1995, ch. 305, § 64; 2008, ch. 971, § 1.

Compiler's Notes.

Acts 2008, ch. 971, § 1 provided that the code commission is directed to change all references to "tax assessor", wherever such references appear, to "assessor of property", as such sections are amended or volumes are replaced. See § 1-1-116.

Cross-References.

Powers and duties of board, title 67, ch. 1, part 3.

Tax law generally, title 67.

Law Reviews.

The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

NOTES TO DECISIONS

1. Rules and Regulations.

The state board of equalization has the authority to promulgate rules and manuals to aid in the appraisal, classification and assessment of property, and while the board could, if it wished to do so, define the term religious institution by promulgating a rule, it is not required to do so as a condition to exercising its responsibility to hear and determine appeals concerning the exemption of property from taxation. Kopsombut-Myint Buddhist Center v. State Bd. of Equalization, 728 S.W.2d 327, 1986 Tenn. App. LEXIS 3607 (Tenn. Ct. App. 1986).

4-3-5104. Executive secretary — Appointment.

(a) The state board of equalization shall appoint an executive secretary, who shall be a person qualified by training and experience to assist the board and to perform the duties of this office.

(b) The board shall fix the salary of the executive secretary, who shall serve at the pleasure of the board.

History.

Acts 1957, ch. 228, § 1; 1974, ch. 771, § 2; T.C.A., § 4-307.

4-3-5105. Powers and duties of executive secretary.

Under the direction of the state board of equalization, the executive secretary has the power and duty to:

(1) Keep written minutes of all meetings of the state board setting forth all actions of the state board, which shall be open to public inspection during regular office hours;

(2) Conduct preliminary hearings and make investigations for the state board regarding any appeals before the board from assessments of property, other than assessments made by the comptroller of the treasury;

(3) Obtain evidence, information and statistics relative to the value, classification and assessment of property for assistance to the state board in its duties of equalization;

(4) Require assessors of property to furnish reports under oath, giving specific information relating to assessments and other facts concerning properties and such other information as may be required by the state board;

(5) Prepare an annual report, approved by the state board, which shall be made available to the general assembly with an appropriate summary of information regarding assessments of property in each county of the state;

(6) Conduct such studies of the relationship between existing assessments and the value as set out in § 67-5-603 of such property or classes of property as may be directed by the state board;

(7) Study and investigate the tax laws of other states and policies of federal and state agencies relating to assessments of property;

(8) Approve applications for exemption from property taxation, subject to review by the state board;

(9) Give assistance to local boards of equalization on matters affecting the equalization of assessments and the interpretation of laws relating to assessment, classification and valuation of property; and

(10) Carry out all policies, rules and regulations that are adopted by the state board.

History.

Acts 1957, ch. 228, § 1; 1974, ch. 771, § 2; T.C.A., § 4-307; Acts 1995, ch. 305, § 65; 2008, ch. 971, § 1.

Compiler's Notes.

Acts 2008, ch. 971, § 1 provided that the code commission is directed to change all references to "tax assessor", wherever such references appear, to "assessor of property", as such sections are amended or volumes are replaced. See § 1-1-116.

Cross-References.

Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-3-5106. Employment of personnel.

The executive secretary may employ such personnel as are approved by the state board, either part time or full time, to assist in carrying out §§ 4-3-5102 — 4-3-5105 and any other provisions required of the executive secretary by law.

History.

Acts 1957, ch. 228, § 1; 1974, ch. 771, § 2; T.C.A., § 4-307.

PART 52

[RESERVED]

PART 53

[RESERVED]

PART 54

TENNESSEE SPORTS HALL OF FAME ACT OF 2019

4-3-5401. Short title.

This part shall be known and may be cited as the "Tennessee Sports Hall of Fame Act of 2019."

History.
Acts 2019, ch. 88, § 1.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

4-3-5402. Part definitions.

As used in this part:

(1) "Board" means the Tennessee hall of fame board created within the department under § 4-3-5404;

(2) "Commissioner" means the commissioner of tourist development, or the commissioner's designee;

(3) "Department" means the department of tourist development; and

(4) "Hall of fame" means the Tennessee sports hall of fame created under § 4-3-5403.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, § 1.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

4-3-5403. Creation and administration — Examination and audit.

(a) There is created a Tennessee sports hall of fame.

(b) The board shall administer the hall of fame, pursuant to § 4-3-5404.

(c) The hall of fame is subject to examination and audit by the comptroller of the treasury in the same manner as prescribed for departments and agencies of the state pursuant to § 8-4-109.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, §§ 2, 3.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

The Tennessee sports hall of fame, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

4-3-5404. Existing board vacated — Creation of new board — Members — Term of office — Meetings — Executive director.

(a) As of April 4, 2019:

(1) The existing membership of the Tennessee sports hall of fame board of directors is vacated and the board ceases to exist; and

(2) The position of executive director of the board of directors and any other position of employment with the board is vacated and those positions cease to exist.

(b)(1) There is created the Tennessee sports hall of fame board. For administrative purposes, the hall of fame is attached to the department. The board is composed of nineteen (19) voting members as follows:

(A) Six (6) members each being appointed by the governor, the speaker of the senate, and the speaker of the house of representatives; and

(B) The commissioner.

(2) Each appointing authority shall appoint two (2) members from each grand division of this state, and when making future appointments, shall ensure that the grand divisions are equally represented.

(3) In order to stagger the terms of the newly appointed board members:

(A) The governor shall appoint six (6) persons to initial terms expiring on July 1, 2023;

(B) The speaker of the senate shall appoint six (6) persons to initial terms expiring on July 1, 2022; and

(C) The speaker of the house of representatives shall appoint six (6) persons to initial terms expiring on July 1, 2021.

(4) Following the initial terms, all appointed members of the board shall serve terms of four (4) years. A member shall not serve more than two (2) consecutive four-year terms.

(5) Existing members of the Tennessee sports hall of fame board of directors, as of the day immediately preceding April 4, 2019, are not eligible for appointment to the board.

(c) In the event of a vacancy for an appointed member of the board, the respective appointing authority shall fill the vacancy for the unexpired term. Each appointee shall serve until a successor is duly appointed and qualified.

(d) The commissioner shall call the first meeting of the board after April 4, 2019. At the first meeting, and at the first meeting of each year thereafter, the board shall elect from among its members:

(1) A chair, vice chair, and any other officers deemed necessary; and

(2) An executive committee to be composed of seven (7) members, with two (2) members representing each grand division of this state, and the commissioner, who shall serve as chair of the executive committee.

(e) The board shall meet at the call of the chair and not less than two (2) times per year.

(f) The members of the board are not entitled to any compensation for their service on the board, nor are the members entitled to per diem or travel expenses for purposes of carrying out their duties under this part.

(g) Meetings of the board must comply with the open meeting requirements of title 8, chapter 44.

(h) All records of the board are deemed to be public records for purposes of the public records law, compiled in title 10, chapter 7.

(i) The commissioner may appoint hall of fame personnel subject to the approval of the board. Nothing in this subsection (i) prohibits members from submitting recommendations to the commissioner for the appointment of hall of fame personnel. The hall of fame's personnel shall not be considered state employees for any purposes. The hall of fame's personnel are subject to an annual performance review by the commissioner, and upon completion of the review, the commissioner shall report the findings to the board.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, §§ 4-7.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

Acts 2019, ch. 88, § 2 provided that the Tennessee hall of fame board created within the department of tourist development under this section shall, within thirty (30) days of the last members appointment, reconsider, in whole or in part, the hall of fame classes elected for 2018 and 2019.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-3-5405. Duties of board — Plan of operation.

(a) The board shall:

(1) Nominate and induct qualified athletes, athletic teams, sports personalities, and sporting events to the hall of fame in accordance with guidelines prescribed by the board, subject to approval by the commissioner;

(2) Conduct fundraising to support the hall of fame. Any funds raised by the board must be used to support the hall of fame and held by the department and accounted for separately for such use;

(3) Offer advice and guidance to the commissioner for purposes of the commissioner's administration of the hall of fame, including, but not limited to:

(A) Suggesting programs and campaigns that are designated to promote the spirit of sportsmanship and genteel competition both inside and outside the arena of athletic competition; and

(B) Recommending guidelines and criteria, consistent with the purposes of the hall of fame, for purposes of assisting the commissioner with the administration of a scholarship program under § 4-3-5407; and

(4) For good cause shown, review, reconsider, and renominate, in whole or in part, a previous class elected to the hall of fame.

(b)(1) At least ninety (90) days prior to the beginning of each state fiscal year, the board shall submit a plan for operation to the commissioner for review and approval. The plan of operation must be in such form as the department requires and must include, but not be limited to, the following:

(A) A budget for operating and capital expenditure;

(B) Contracts for services; and

(C) Policies and procedures adopted by the board to govern the expenditure of funds, including any such policies and procedures required by the

department through rules.

(2) The plan of operation may be amended during the fiscal year with the written approval of the commissioner.

(3) Within ninety (90) days after the end of its fiscal year, the board shall annually submit to the department and comptroller of the treasury a report setting forth the board's accomplishments.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, § 8.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

4-3-5406. Purposes of the hall of fame — Commissioner facilitation.

(a) In providing administrative support to the hall of fame, the commissioner shall facilitate the purposes of the hall of fame, which are to:

(1) Honor, preserve, and perpetuate the names and accomplishments of outstanding athletes, athletic teams, and other sports personalities who are natives of Tennessee;

(2) Honor persons who have competed on teams for, or worked for, Tennessee institutions of learning;

(3) Honor persons with outstanding athletic records who reside in this state at the time of their nomination;

(4) Honor deceased persons with outstanding athletic records who were residents of Tennessee;

(5) Establish, erect, and maintain a permanent archive for the collection and display of memorabilia related to the lives and careers of individuals, teams, and sports events chosen for induction into the hall of fame; and

(6) Inform the public about the lives and accomplishments of the inductees and purposes of the hall of fame.

(b) The commissioner may delegate any duties under subsection (a) to the board as the commissioner deems necessary.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, § 9.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

4-3-5407. Powers of the commissioner.

The commissioner may:

(1) Request from any branch, department, division, board, bureau, commission, or other agency of the state or that receives state funds, such information as will enable the commissioner and board to best serve the hall of fame and perform the duties required by this part;

(2) Enter into any mutual agreements and contracts for the employment of personnel and operation of the hall of fame, excluding the requirements of § 4-3-1105. Nothing in this part or any other law, except title 9, chapter 8,

shall be construed as a waiver of the state's immunity under the eleventh amendment to the Constitution of the United States or of the state's sovereign immunity for the board, its directors, officers, or employees;

(3) Administer a scholarship program to award privately funded scholarships to students based on guidelines and criteria recommended by the board, consistent with the purposes of the hall of fame; and

(4) Promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, for purposes of carrying out this part.

History.
Acts 2019, ch. 88, § 1; 2020, ch. 699, § 10.

Compiler's Notes.
Former part 54, §§ 4-3-5401 — 4-3-5405 (Acts 1994, ch. 738, §§ 2-6; 2001, ch. 142, §§ 1, 2; 2006, ch. 822, §§ 1, 2; 2014, ch. 685, §§ 1,2; 2018, ch. 1056, §§ 1, 2) concerning the Tennessee Sports Hall of Fame Act of 1994, was repealed by Acts 2019, ch. 88, § 1 which enacted a new part 54, effective April 4, 2019.

PART 55

INFORMATION SYSTEMS COUNCIL

4-3-5501. Establishment — Membership — Appointment — Compensation.

(a) The entire membership of the information systems council as comprised on June 30, 2015, shall be vacated on July 1, 2015, and new members shall be appointed in accordance with subsection (b).

(b)(1) There is hereby created an information systems council, to be composed of the following members:

(A) The commissioner of finance and administration;

(B) The commissioner of general services;

(C) The comptroller of the treasury;

(D) The speaker of the senate, or the speaker's designee;

(E) The speaker of the house of representatives, or the speaker's designee;

(F) Two (2) members of the senate, to be appointed by the speaker of the senate;

(G) Two (2) members of the house of representatives, to be appointed by the speaker of the house of representatives;

(H) The director of legislative information systems, appointed pursuant to § 3-16-102;

(I) Two (2) private citizens who have demonstrated expertise and experience in managing large and diverse information management systems, both of whom shall be appointed by the governor. The private citizen members shall each serve three-year terms;

(J) One (1) commissioner of the Tennessee public utility commission or designee, to be appointed by the chair of the commission, who shall be a member whenever the council considers statewide telecommunications issues or other matters relating directly to areas over which the commission has responsibility;

(K) The chief justice of the supreme court of Tennessee, or the chief justice's designee;

(L) One (1) state employee who has experience in the field of information systems, to be appointed by the governor; and

(M) The chair of the state employee-run information systems management group.

(2) The persons appointed pursuant to subdivisions (b)(1)(A)-(K) shall be voting members of the council.

(3) The persons appointed pursuant to subdivisions (b)(1)(L) and (M) shall be nonvoting members of the council.

(c)(1) Legislative members of the council shall be appointed for two-year terms and shall serve only so long as they remain members of the general assembly. Any legislative vacancy on the council shall be filled by appointment by the appropriate speaker, for the purpose of serving out the remainder of the unexpired term.

(2) Any vacancy among the private citizen members of the council shall be filled by the governor to serve for the remainder of the unexpired term.

(3) Members appointed pursuant to subdivisions (b)(1)(F), (G), (H), (I), (J), (L), and (M) shall be eligible for reappointment to the council.

(d)(1) The commissioner of finance and administration shall serve as the chair of the information systems council.

(2) The director of legislative information systems shall serve as vice chair of the council.

(e)(1) The council shall meet quarterly at a time established by the chair of the council. Special meetings of the council for the transaction of business may be called by the chair by giving written notice to all members.

(2) Eight (8) voting members of the council shall constitute a quorum, and all official action of the council shall require a quorum.

(3)(A) Members shall attend at least fifty percent (50%) of the required quarterly meetings.

(B) If any council member fails to attend meetings as required by subdivision (e)(3)(A), the chair of the information systems council shall report that member's name and attendance record to the member's appointing authority and the appointing authority shall remove the member from the council.

(f)(1) Legislative members of the information systems council shall be reimbursed as members of the general assembly are paid for attending legislative meetings as provided in § 3-1-106.

(2) Nonlegislative members of the information systems council shall receive no compensation for their work with the council but may be reimbursed for expenses in accordance with the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.

Acts 1994, ch. 992, § 2; 1995, ch. 305, § 66; 2004, ch. 897, § 1; 2010, ch. 1077, § 3; 2015, ch. 385, § 3; 2017, ch. 94, §§ 5, 77.

Compiler's Notes.

The information systems council, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

4-3-5502. Duties and responsibilities.

The duties and responsibilities of the information systems council include the following:

(1) Developing policy guidelines for the overall management of the state's information systems, which shall include, but not be limited to, the following:

(A) Appropriate hardware and software for the state's data center;

(B) Appropriate security and disaster recovery policies and procedures for the state's information systems environment;

(C) The most appropriate and cost effective use of departmental computer systems, which shall, for the purpose of this policy, include the appropriate use and integration of microcomputers and minicomputers into the state's information management system;

(D) The most appropriate and cost effective telecommunication policies;

(E) Establishment of guidelines for the acquisition of both hardware and software;

(F) Making recommendations to the governor and general assembly regarding amendments to the purchasing laws that would be helpful in establishing and operating information systems; and

(G) Establishment of effective long-range planning for the state's information management system; and

(2) To periodically review the overall effectiveness and efficiency with which the state's information systems network is managed. Such review shall be conducted where appropriate on a department by department basis and shall be for the purpose of identifying weaknesses in the current system as well as opportunities for improvements in each department's information system. Such reports as may be issued pursuant to this review shall be transmitted to the appropriate agency head, the governor and the speakers of the senate and house of representatives. Such a review shall include, but not be limited to:

(A) The adequacy of systems development planning and implementation;

(B) Opportunities for increased efficiency through either a reduction of the long run current operating costs for various programs of state government, or the opportunity to provide increased services through more effective use of management information systems, or both; and

(C) The most appropriate and cost effective hardware and software.

History.
Acts 1994, ch. 992, § 3.

4-3-5503. Staffing — Division of strategic technology solutions.

(a) The division of strategic technology solutions in the department of finance and administration shall serve as staff to the information systems council. In addition, the division of strategic technology solutions shall facilitate the use of information systems, provide technical direction and assistance to departments and agencies for all distributive processing and network related systems, and serve as a computer service bureau.

(b)(1) In accordance with the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541 et seq.), and the criminal justice information services (CJIS) security policy, a criminal history background check performed by the Tennessee bureau of investigation and the federal bureau of investigation shall be required for all employees and contractors of the division of strategic technology solutions having elevated and privileged access to criminal justice information systems or to information accessed via criminal justice information systems. The department of human resources shall maintain classifications of employees subject to the criminal history background check. Background checks shall include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The department of finance and administration shall establish policies concerning the implementation and use of criminal history background checks conducted pursuant to this section.

(2) The state shall pay for costs associated with criminal history background checks conducted pursuant to this section.

History.
Acts 1994, ch. 992, § 4; 2014, ch. 544, § 1; 2016, ch. 846, §§ 3, 4; 2020, ch. 689, § 2.

Compiler's Notes.
Sections 3541 through 3548 of the United States Code, referred to in (b)(1), were repealed by Act Dec. 18, 2014, P.L. 113-283, § 2(a), 128 Stat. 3073. For similar provisions, see 44 USCS § 3551.

4-3-5504. Policymaking authority — Legislative intent.

(a) Notwithstanding any other law to the contrary, the information systems council shall, with the assistance and support of the department of general services and the department of finance and administration, be responsible for establishing the policy under which the state procures telecommunications, computer or computer-related equipment or services. The council, in establishing procurement policy, shall also have the ability to authorize research and development, including the procurement of equipment, for the purpose of improving the state's information system. The role of the council, in establishing such policy, shall not include the administrative or day-to-day operations of the procurement process, including, but not limited to, the selection of vendors to provide equipment or services and the resolution of protests. Such procurements shall be administered by either the department of general services or the department of finance and administration, or both, under present or future laws, rules and regulations governing procurements.

(b) It is the legislative intent that the information systems council, in establishing procurement policy pursuant to this section, select the purchasing method for a procurement that, in the sole discretion of the council, will produce the lowest and best overall costs to the state. In making the determination of which method would produce the lowest and best overall costs, the council shall consider, when appropriate, the costs of the hardware, software development, operations, maintenance, and such other factors as the council determines to be relevant.

History.
Acts 1994, ch. 992, § 5.

4-3-5505. Disposition of surplus computers.

Notwithstanding any other law to the contrary, including title 12, chapter 2, part 4, the council has the authority to dispose of surplus state computers and any components thereof, at no cost, to governmental entities and not-for-profit corporations whose chartered activities are related to education.

History.
Acts 1994, ch. 992, § 6.

4-3-5506. Leasing of state communications services.

(a) The information systems council has the authority to establish a program to lease state communications services to public and private agencies, as set forth in policies and procedures prepared by the commissioner of finance and administration and approved by the comptroller of the treasury. The council will establish fees consistent for all users of the network based on a cost recovery method approved by the commissioner of finance and administration.

(b) Disputes about fees established under subsection (a) shall be resolved by the procurement commission.

History.
Acts 1997, ch. 260, § 3; 2011, ch. 295, § 19.

4-3-5507. Licensure or sale of state information systems.

The information systems council has the authority to approve license or sale of the state's information systems' interest or copyright to a vendor under policies and procedures prepared by the commissioner of finance and administration and approved by the comptroller of the treasury. However, any license or sale of the general assembly's information systems' interest or copyright shall be subject to the approval of the speakers of the senate and the house of representatives.

History.
Acts 1997, ch. 260, § 4.

4-3-5508. Information systems council creation and functions.

The information systems council shall perform the functions for which it is responsible under §§ 47-10-117 — 47-10-120 of the Uniform Electronic Transactions Act.

History.
Acts 2001, ch. 72, § 24.

4-3-5509. Conduct of meetings with subject matter open to the public and confidential.

(a) If the council holds a meeting covered by the open meeting provisions of title 8, chapter 44, at which subject matter will be discussed that is not

confidential and subject matter will be discussed that is confidential pursuant to § 10-7-504(i), the notice of such meeting required pursuant to § 8-44-103 shall specify that part of the meeting will be a public meeting open to the public and part of the meeting will not be open to the public because of discussion of confidential subject matter.

(b) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:

(1) All business relating to subject matter that is public in nature shall be conducted first; and

(2) At the conclusion of the meeting relating to subject matter that is public in nature, the chair shall announce that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential pursuant to § 10-7-504(i). When everyone at the meeting who is not authorized to attend the confidential portion of the meeting has departed, the confidential portion of the meeting shall commence.

(c) Nothing in this section shall be construed as prohibiting the council from acting upon public matters and confidential matters at separate meetings if the council so desires.

History.
Acts 2005, ch. 247, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-3-5510 — 4-3-5524. [Reserved.]

4-3-5525. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Local government" means any county, municipality, city or other political subdivision of this state, including any school districts or school systems created thereby;

(2) "Private agency" means an accredited nonpublic school or a nonprofit institution of higher education eligible for tuition grants;

(3) "Public agency" means a state agency, local government, an institution under the control of the University of Tennessee or the Tennessee board of regents, the judicial department, the legislative department, a special school district or any other local public school system or school district created or authorized by the general assembly, a public library operated by any unit or agency of local or state government, a museum owned or operated by the state or any political subdivision of the state, or an agency or instrumentality of the federal government; and

(4) "State communications" refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include broadcast radio and television facilities.

History.
Acts 1997, ch. 260, § 2.

CHAPTER 4

ADMINISTRATION OF STATE DEPARTMENTS

Section

4-4-101. Reorganization of divisions.
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4-4-124. Executive internal auditor.
4-4-125. Review of regulatory board actions that may constitute potentially unreasonable restraint of trade.

4-4-101. Reorganization of divisions.

(a) The commissioner of each department under chapter 3 of this title, with the approval of the governor, has the authority to consolidate any two (2) or more offices within the commissioner's department, or reduce the number of divisions, or create new divisions therein.

(b) Notwithstanding subsection (a), no state department or agency in the executive branch of state government shall make organizational changes within such department or agency without the prior approval of the commissioner of finance and administration. If such organizational changes require a transfer of funds between organizational accounts and are contrary to the manner in which appropriations have been made in the appropriations act, then such transfer of funds is subject to approval by the commissioner of finance and administration and by a majority of a committee comprised of the speaker of the senate, the speaker of the house of representatives, and the comptroller of the treasury; provided, however, that if the transfer of funds is merely a change in the organizational account to which the appropriation is allocated and does not constitute a change in the purpose of the appropriation, then the approval of the committee shall not be required; provided further, however, that the approval of the commissioner of finance and administration shall be required.

History.
Acts 1937, ch. 33, § 76; C. Supp. 1950, § 255.88 (Williams, § 255.81); T.C.A. (orig. ed.), § 4-401; Acts 2013, ch. 454, § 32.

Law Reviews.
The Independent Agency After Bowsher v. Synar — Alive and Kicking, 40 Vand. L. Rev. 903 (1987).

Attorney General Opinions.
Governor's authority to transfer department functions and funds, OAG 98-041, 1998 Tenn. AG LEXIS 41 (2/9/98).

4-4-102. Transfer of functions between departments.

(a) The governor has the authority to transfer any functions between the departments created and established by chapter 3 of this title, except to or from the department of audit, in the interest of a more economical and efficient state service.

(b) The governor shall make each such transfer by an executive order, a copy of which shall be filed with the secretary of state.

History.
Acts 1937, ch. 33, § 77; C. Supp. 1950, § 255.89 (Williams, § 255.82); T.C.A. (orig. ed.), § 4-402.

Cross-References.
Transfer of functions between departments with respect to federal-state programs, § 4-4-117.

Attorney General Opinions.
Governor's authority to transfer department functions and funds, OAG 98-041, 1998 Tenn. AG LEXIS 41 (2/9/98).

T.C.A. § 4-4-102 does not unconstitutionally delegate legislative powers to the governor in violation of the separation of powers clause, OAG 06-099, 2006 Tenn. AG LEXIS 110 (6/8/06).

4-4-103. Department regulations.

The commissioner of each department is empowered to prescribe regulations, not inconsistent with the law, for the government of the commissioner's department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto.

History.
Acts 1937, ch. 33, § 10; 1939, ch. 11, § 6; C. Supp. 1950, § 255.10; T.C.A. (orig. ed.), § 4-403.

Cross-References.
Procedure for rules and regulations, title 4, ch. 5.

4-4-104. Department offices.

(a) Each department shall maintain a central office at the capitol, which shall be the official residence of each commissioner, or head of department.

(b) The commissioner of each department may, in the commissioner's discretion and with the approval of the governor, establish and maintain at places other than the seat of government, branch offices for any one (1) or more functions of the commissioner's department.

History.
Acts 1937, ch. 33, § 11; C. Supp. 1950, § 255.11; T.C.A. (orig. ed.), § 4-404.

Textbooks.
Tennessee Jurisprudence, 24 Tenn. Juris., Venue, §§ 2, 4.

Law Reviews.
Judicial Review under the Tennessee Uniform Administrative Procedures Act — An Update (Ben H. Cantrell), 13 Mem. St. U.L. Rev. 589 (1984).

NOTES TO DECISIONS

Analysis

1. Jurisdiction.
2. County of Residence.
3. Place of Suit.

1. Jurisdiction.

Jurisdiction was proper where the Tennessee department of transportation's commissioner had established residence. Southwest Williamson County Cmty. Ass'n v. Saltsman, 66 S.W.3d 872, 2001 Tenn. App. LEXIS 641 (Tenn. Ct. App. 2001).

2. County of Residence.

While this section permits the maintenance of branch offices at places other than the seat of government, it locates each department and fixes the commissioner's residence at the capitol in Nashville. Delta Loan & Finance Co. v. Long, 206 Tenn. 709, 336 S.W.2d 5, 1960 Tenn. LEXIS 401 (1960), superseded by statute as stated in, Johnson v. McReynolds, — S.W.2d —, 1989 Tenn. App. LEXIS 184 (Tenn. Ct. App. Mar. 15, 1989).

3. Place of Suit.

A commissioner or head of a department of state government may ordinarily be sued only in the county of such person's official residence and a transitory action may not be maintained against such person in another county. Delta Loan & Finance Co. v. Long, 206 Tenn. 709, 336 S.W.2d 5, 1960 Tenn. LEXIS 401 (1960), superseded by statute as stated in, Johnson v. McReynolds, — S.W.2d —, 1989 Tenn. App. LEXIS 184 (Tenn. Ct. App. Mar. 15, 1989); Chamberlain v. State, 215 Tenn. 565, 387 S.W.2d 816, 1965 Tenn. LEXIS 634 (1965).

Situs and official residence of Tennessee real estate commission as a division of a state department was Davidson County and suit against commission could only be maintained in that county. Chamberlain v. State, 215 Tenn. 565, 387 S.W.2d 816, 1965 Tenn. LEXIS 634 (1965).

In declaratory judgment action by county officials against heads of state departments seeking to have state statute declared unconstitutional, T.C.A. § 20-4-101, pertaining to venue in transitory action, was not applicable because action of such nature against state was not transitory, but local; venue for suits against state officials in Davidson County was established by this section. Morris v. Snodgrass, 871 S.W.2d 484, 1993 Tenn. App. LEXIS 129 (Tenn. Ct. App. 1993).

4-4-105. Department office hours — Overtime.

(a)(1) Each department shall be opened for the transaction of public business from eight o'clock in the morning (8:00 a.m.) until four thirty in the afternoon (4:30 p.m.) of each day except Saturdays, Sundays and legal holidays.

(2) Except for those personnel required to be on duty because of the pressure of business or in case of any emergency, state offices shall be closed and a holiday observed on the Monday following any legal holiday that falls on Sunday and on the Friday before any legal holiday that falls on Saturday.

(3) The governor may, at the governor's discretion, substitute the Friday after the fourth Thursday in November, which is Thanksgiving Day, for the legal holiday that occurs on the second Monday in October, which is Columbus Day, for purposes of closing state offices only.

(4) Each employee shall be granted a one (1) hour unpaid lunch period.

(b) Whenever the pressure of business so demands and in cases of emergency, the commissioner in any department is authorized to direct that such personnel as may be required in any particular office shall be on duty, in which event the personnel performing such additional duties shall be entitled to equivalent time off at other times during the week.

(c) Subsections (a) and (b) shall not apply to the uniformed members of the departments of safety or revenue; or to the game wardens or conservation officers charged with the enforcement of the fish and game laws; or to the employees of the department of transportation with the job title of highway response operator 1, highway response operator 2, highway response operator

supervisor 1, highway response operator supervisor 2, communications dispatcher 1, communications dispatcher 2, transportation management center operator, transportation management center supervisor 1, transportation management center supervisor 2; or to any members or employees of the departments of correction or children's services, except administrative officials. Nor shall subsections (a) and (b) apply to employees and officials of hospitals or institutions, regardless of the department by which operated.

(d) Any commissioned employee of the department of safety who is required to be on duty on any legal holiday shall be entitled to payment in addition to such employee's normal compensation. Payment shall be made in an amount recommended by the commissioner of safety, authorized in advance by the commissioner of human resources, and approved in advance by the commissioner of finance and administration. This subsection (d) shall not apply to any employee with a commission or rank of captain and above, except a captain over a division.

History.

Acts 1937, ch. 33, § 12; 1939, ch. 11, § 7; 1945, ch. 30, § 1; 1949, ch. 83, § 1; C. Supp. 1950, § 255.12; Acts 1951, ch. 40, § 1; impl. am. Acts 1955, ch. 102, § 1; Acts 1967, ch. 337, § 1; 1974, ch. 638, § 1; 1975, ch. 37, § 1; T.C.A. (orig. ed.), § 4-405; Acts 1980, ch. 923, § 1; 1981, ch. 429, § 1; 1987, ch. 35, § 1; 1989, ch. 278, § 18; 1996, ch. 1079, § 16; 2004, ch. 602, § 1; 2007, ch. 30, § 1; 2007, ch. 60, § 3.

Compiler's Notes.

Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

Cross-References.

Compensation for overtime, § 8-23-201.

Legal holidays, § 15-1-101.

NOTES TO DECISIONS

1. Holiday Compensation.

Trial court, on remand, properly granted a motion filed by the commissioner of the Department of General Services for summary judgment in a former employee's action for alleged unpaid holiday compensation because the suit against the commissioner in his official capacity was actually a suit against his office, the Department proved the necessary statutory criteria, and the employee was not a state employee on the last scheduled workday immediately preceding the holiday at issue. Arnold v. Oglesby, — S.W.3d —, 2020 Tenn. App. LEXIS 344 (Tenn. Ct. App. July 30, 2020).

4-4-106. Appointment of personnel.

Except as may be provided in this chapter, such officers, assistants and employees as may be necessary to carry on the work of each department of the state government shall be appointed by the commissioner or administrative head of such department from the list of eligibles furnished by the department of human resources, and subject to such minimum qualifications as to efficiency, as may be established by executive order of the governor, or by law.

History.

Acts 1937, ch. 33, § 6; 1939, ch. 11, § 3; C. Supp. 1950, § 255.6; T.C.A. (orig. ed.), § 4-406; Acts 2007, ch. 60, § 3.

Compiler's Notes.

Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-4-107. Compensation of personnel — Discharge.

The governor may strike from the state payroll any state employee appointed by the governor or the governor's appointee, and may fix, increase or decrease the salary of such employee. The salaries of the commissioners and other officers as set out in § 8-23-101 shall be fixed as therein provided. In no case, however, shall any compensation for personal services be fixed in excess of the amount of money appropriated by the general assembly for personal services in any department or agency of the state government.

History.
Acts 1937, ch. 33, § 7; 1939, ch. 11, § 4; C. Supp. 1950, § 255.7; T.C.A. (orig. ed.), § 4-407.

4-4-108. Blanket surety bond.

(a) A blanket surety bond shall be obtained covering all officers and employees of every department, agency, office, commission, institution, institution of higher education, and instrumentality of the executive, legislative and judicial branches of state government, except senators and representatives of the general assembly, delegates to a constitutional convention, judges of the supreme court, court of appeals, and court of criminal appeals, judges, clerks, officers and employees of the chancery, circuit, and criminal courts, and other courts of record other than the supreme court, court of appeals and court of criminal appeals, officers and employees of counties and municipalities, constables, notaries public, notaries at large, and any special deputy appointed by a sheriff pursuant to § 8-8-303.

(b) The bond shall be executed by a surety company authorized to do business in this state and made payable to the state.

(c) The bond may be written separately, or as a rider to, or as an extension of, coverage under a policy of insurance providing coverage to the state for other purposes.

(d)(1) The bond may provide separate or additional penalty amounts or conditions for an individual officer or employee or class of officers or employees when the interest of the state demands it.

(2) The penalty amount or amounts for clerks, officers and employees of the supreme court, court of appeals, and court of criminal appeals shall be determined by the procurement commission after consulting with the judges of the supreme court or their designated representatives.

(3) The penalty amount or amounts for the comptroller of the treasury, secretary of state and state treasurer, and their officers and employees, and the officers and employees of the general assembly shall be determined by the procurement commission after consulting with the speakers of the senate and the house of representatives or their designated representatives.

(4) The penalty amount or amounts for all other officers and employees shall be determined by the procurement commission.

(e) Any deductible amount or amounts shall be determined by the procurement commission and shall be commercially reasonable.

(f) The form and conditions of the bond shall be determined pursuant to §§ 8-19-101 and 8-19-111.

(g) It is the intent of the general assembly that the blanket surety bond required by subsection (a) shall be the only surety bond required for the officers and employees described in subsection (a).

History.
Acts 1937, ch. 33, § 8; 1949, ch. 145, § 1; C. Supp. 1950, § 255.8; Acts 1970, ch. 601, §§ 1, 7; T.C.A. (orig. ed.), § 4-408; Acts 1980, ch. 887, § 1; 2011, ch. 295, § 19.

Textbooks.
Tennessee Jurisprudence, 6 Tenn. Juris., Clerks of Court, §§ 5, 14.

NOTES TO DECISIONS

Analysis

1. Limitations in Bond.
2. Standing.

1. Limitations in Bond.
Provision in bond limiting recovery thereon to three years from the cancellation of the bond was binding on the state where there was no provision in the statute governing the provisions that such bond should contain. State v. Evans, 47 Tenn. App. 1, 334 S.W.2d 337, 1959 Tenn. App. LEXIS 125 (Tenn. Ct. App. 1959).

2. Standing.
Dismissal of a quo warranto action for lack of standing was appropriate because property owners and attorneys who represented property owners in forfeiture proceedings lacked standing to bring the action in their own names on any public official bond or a blanket surety bond in that, even assuming that a surety issued such a bond or bonds, the bonds were payable to the state, but the State of Tennessee was not seeking recovery. Heredia v. Gibbons, — S.W.3d —, 2019 Tenn. App. LEXIS 351 (Tenn. Ct. App. July 17, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 576 (Tenn. Dec. 4, 2019).

4-4-109. Services performed by one department for another.

Whenever, in the carrying on of the work of any department, the services of any expert, or the use of any special apparatus shall be desired, or any work needs to be done for which the department is not equipped, the commissioner thereof may request the assistance of any other department that may have the needed experts or apparatus. It is lawful for the department so called upon to cooperate in meeting the need so far as it can be done without detriment to the work of that department, and the actual costs, as determined by the commissioner of finance and administration, shall be the proper charge, unless otherwise approved by the commissioner of finance and administration, and filed with the comptroller of the treasury.

History.
Acts 1919, ch. 167, § 1; Shan. Supp., § 325a114; Code 1932, § 340; Acts 1975, ch. 136, § 1; T.C.A. (orig. ed.), § 4-409.

Cross-References.
Temporary transfers by personnel department, § 4-3-1703.

4-4-110. Interdepartmental payments by agreement.

When costs provided in § 4-4-109 have been incurred between departments, the commissioners thereof shall, from time to time, certify to the commissioner of finance and administration the sums due from the one to the other on account of such work, and the commissioner of finance and administration shall thereupon cause to be paid such sums to the creditor department. The payment may be made by check, as other state bills are paid, or by a system of debits and credits, as the commissioner of finance and administration may determine. All sums so received by, or credited to, any department shall be

added to the current appropriation made for the support of that department, to the end that its appropriation may not be depleted by reason of the work done for another department.

History.
Acts 1919, ch. 167, § 1; Shan. Supp., § 325a115; Code 1932, § 341; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 341; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1975, ch. 136, § 2; T.C.A. (orig. ed.), § 4-410.

4-4-111. Interdepartmental payments — Approval.

(a) When a department of state government or division of any department of state government renders services that are directly or indirectly incident to the duties of another department, then the department rendering such service may be reimbursed for the service by the other department out of the funds credited to the latter department, but such reimbursement shall only be made upon the approval of the commissioner of finance and administration.

(b) Such reimbursement shall be made either by actual payment or by the proper bookkeeping entry in the department of finance and administration prior to the end of the fiscal year in which such services were rendered.

History.
Acts 1939, ch. 100, §§ 1, 2; C. Supp. 1950, § 255.92 (Williams, § 255.86); impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1975, ch. 136, § 3; T.C.A. (orig. ed.), § 4-411.

4-4-112. Cooperation between departments.

(a)(1) Two (2) or more departments shall unite in cooperative work in lines germane to the duties of those departments, and the commissioners thereof shall agree on the distribution of the expense to be incurred.

(2) The agreement shall include the payment or transfer from one department to another of a lump sum, and the payment by the department receiving the same, of all expenses incurred in such cooperative work.

(b) The commissioner of finance and administration shall, upon due notification of the agreement, make the necessary payments, or credits and debits, from sums not otherwise under requisition by the cooperating departments.

History.
Acts 1919, ch. 167, § 3; Shan. Supp., § 325a116; Code 1932, § 342; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 342; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1975, ch. 136, § 4; T.C.A. (orig. ed.), § 4-412.

4-4-113. Federal funds — Acceptance and use — Notification.

(a) Any department of state government may accept and use federal financial assistance from any agency or instrumentality of the federal government for purposes of carrying on programs in which such department may be authorized to engage; provided, that such acceptance shall be with the express approval of the governor; and such department, acting through its commissioner, is authorized to enter into any and all requisite agreements with such federal agency or instrumentality for the purpose of acceptance and use of such financial assistance; provided, further, that no agreement or contract shall be

made by such department involving the expenditure of funds beyond those available to such department by appropriation, gift, or otherwise.

(b) Any department of state government receiving federal financial assistance shall notify the comptroller of the treasury and the commissioner of finance and administration within five (5) business days from the date of receipt by the department's commissioner or chief financial officer, or equivalent, of official notice in any form or type from the federal awarding agency, or designated cognizant agency, notifying the department of a determination of noncompliance with, or any deficiencies related to compliance with, federal statutes, regulations, or the terms and conditions of a federal award that could result in the following:

(1) Repayment of federal financial assistance;

(2) Reduction in future federal financial assistance by administrative offset against other requests for reimbursements or subsequent awards;

(3) Withholding of advance payments otherwise due to the department;

(4) Temporary withholding of federal financial assistance pending corrective action by the department;

(5) Whole or partial suspension or termination of the federal award; or

(6) Federal awarding agency taking any other remedies legally available to it, including not seeking recovery of a disallowance or improper payment.

(c) All official notices resulting in items described in subdivisions (b)(1)-(6) received by staff of any department of state government pursuant to subsection (b) shall be transmitted to the department's commissioner or chief financial officer, or equivalent, within five (5) business days of receipt.

History. Acts 1945, ch. 120, § 1; C. Supp. 1950, § 423.3 (Williams, § 423.28); T.C.A. (orig. ed.), § 4-413; Acts 2017, ch. 79, § 1.

4-4-114. Reports.

(a)(1) The head of each administrative department, established by chapter 3 of this title, and the state treasurer, the secretary of state and the adjutant general, unless otherwise provided in this title, shall annually, on or before October 1, report in writing to the governor concerning the functions, management and financial transactions of such person's department or agency for the preceding fiscal year.

(2) Such reports, or parts thereof, or summaries and digests thereof, shall be published under the supervision of the tourism division, department of tourist development, upon the direction of the governor.

(b)(1) The commissioner of finance and administration shall promulgate rules and regulations governing the size, format, contents and publishing of all reports of all executive departments and agencies of the state required to make semiannual or annual reports.

(2) The rules and regulations shall include a provision stipulating that there shall be no automatic distribution of reports or publications, except the distribution provided for by title 12, chapter 6, or otherwise by law or resolution enacted after May 25, 1984.

(c) All executive departments and agencies of the state required to make semiannual or annual reports shall make such reports in conformity with the

rules and regulations promulgated for such reports by the commissioner of finance and administration.

History.
Acts 1937, ch. 33, § 9; 1939, ch. 11, § 5; 1941, ch. 10, § 1; 1943, ch. 8, § 1; C. Supp. 1950, § 255.9; impl. am. Acts 1959, ch. 9, § 11; Acts 1965, ch. 308, § 1; 1971, ch. 66, §§ 1, 2; impl. am. Acts 1972, ch. 852, § 14; impl. am. Acts 1976, ch. 468, § 2; T.C.A. (orig. ed.), § 4-414; Acts 1984, ch. 798, § 1.

Cross-References.
State treasurer, statement to governor before meeting of general assembly, § 8-5-111.

4-4-115. Substitute for disabled department head.

(a) In the event of the absence, illness or disability of any commissioner or the head of any department, division or agency of the executive department of state government, the governor is authorized and empowered to designate and appoint a qualified person to act in such capacity.

(b) The person so designated shall have all the powers, duties and responsibility provided for such office under the statutes of this state during the time such person is so serving.

(c) This section shall apply to the secretary of state, the comptroller of the treasury and the state treasurer, except as provided for in §§ 8-3-105, 8-4-302 and 8-5-202.

History.
Acts 1961, ch. 115, § 1; modified; T.C.A., § 4-415.

4-4-116. Federal aid — Federal grant programs.

(a) The governor, acting on behalf of the state, is hereby authorized and empowered to accept from the federal government through any of its departments, bureaus, agencies or other instrumentalities, federal aid made available to this state, whether by grant or loan through any executive order of the president or any act of congress heretofore or hereafter enacted; provided, that any such aid accepted in the form of a loan is subject to the approval of the funding board.

(b)(1) For the purpose of establishing and administering federal grant programs by this state, the governor or the governor's designee is authorized to cooperate with or enter into agreement with, or both, any official of another state.

(2) The governor or the governor's designee is authorized to enter into contracts, in accordance with all applicable laws, rules and regulations, and procedures regarding such contracts, and perform all things necessary in the governor's discretion to secure to this state and citizens of this state the benefits of federal grant programs.

History.
Acts 1959, ch. 9, § 9; 1965, ch. 167, § 1; T.C.A., § 4-416; Acts 1988, ch. 524, § 1.

4-4-117. Federal-state programs — Transfer of functions between departments.

(a) Notwithstanding the rights, powers and duties that have heretofore been vested in or exercised by any officer, board, commission, department, or other agency of state government to the contrary, the governor has the authority and is hereby empowered to transfer any functions exercised with respect to any joint federal-state programs between the departments, agencies, commissions or boards, whenever such transfers will facilitate the operation of governmental programs or where such transfers are desirable to meet the changes in federal statutes.

(b) The governor has the authority and is hereby authorized to assign or reassign responsibility for any joint federal-state programs hereafter established to any state department, agency, commission or board created under the statutes of the state not inconsistent with the executive order or congressional enactment for the administration of such programs.

History.
Acts 1961, ch. 241, § 2; T.C.A., § 4-417.

Cross-References.
Transfer of functions between departments, § 4-4-102.

Attorney General Opinions.
"Joint federal-state programs" defined, OAG 95-046, 1995 Tenn. AG LEXIS 47 (5/3/95).

Governor's authority to transfer department functions and funds, OAG 98-041, 1998 Tenn. AG LEXIS 41 (2/9/98).

4-4-118. Readers for blind employees.

(a) The commissioner of each department of the executive branch of state government is authorized, in the commissioner's discretion, to employ a reading assistant or assistants for any blind employee in the commissioner's department, to serve without compensation from such department.

(b) Each such reading assistant may be paid for services as reading assistant by and from such blind employee or any nonprofit organization.

(c) "Blind employee" as used in this section means an employee of the state who establishes to the satisfaction of the commissioner of the department where such employee works, that such employee has an impairment of sight, either permanent or temporary, that is so severe or disabling that the employment of a reading assistant or assistants for such employee is necessary or desirable to enable such employee properly to perform such employee's work.

(d) This section shall not be held or considered to prevent or limit in any way the assignment to a blind employee by a department of clerical or secretarial assistance at the expense of such department, if such assistance is normally provided or authorized.

History.
Acts 1963, ch. 142, § 1; T.C.A., § 4-418.

Cross-References.
Appointment of personnel, § 4-4-106.

"Legal blindness" and "total blindness" defined, § 1-3-112.

4-4-119. [Reserved.]

4-4-120. Uncollectable accounts receivable — Writing-off.

(a)(1) The commissioner of finance and administration and the comptroller of the treasury shall establish procedures for the writing-off of uncollectable accounts receivable by all state agencies, departments and institutions that charge the public, create a debt to the state, and maintain accounts receivable.

(2) No state agency, department or institution described in this section shall write off uncollectable accounts receivable except by the procedure to be established as provided in this section.

(b) Every rule or regulation, or change thereto, promulgated under the authority of this section shall:

(1) Be filed with the secretary of state;

(2) Bear the name of the person or persons proposing such rule or regulation; and

(3) Have attached thereto a copy of the roll call vote on adoption by "aye" or "no" of each person voting.

History.
Acts 1977, ch. 93, §§ 1, 2; T.C.A., § 4-420.

4-4-121. Smoking policies.

(a) Smoking shall be prohibited in all buildings that are owned or operated by the state, except for those sleeping rooms in state park inns, cabins that are designated as smoking rooms or cabins, and as provided by § 49-7-135. It is the intent of the general assembly that all buildings that are owned or operated by the state, other than sleeping rooms in state park inns, cabins designated for smoking, and as provided by § 49-7-135, shall be completely smoke-free.

(b) Smoking shall be prohibited in all motor vehicles that are owned, leased, or operated by the state. It is the intent of the general assembly that all motor vehicles that are owned, leased, or operated by the state shall be completely smoke-free.

History.
Acts 1990, ch. 700, § 1; 2005, ch. 329, § 2; 2006, ch. 876, § 1; 2007, ch. 463, § 1; 2017, ch. 161, § 1.

Cross-References.
Policies on smoking in student dormitories, § 49-7-135.

Law Reviews.
"Get Off Your Butts": The Employer's Right to Regulate Employee Smoking (David B. Ezra), 60 Tenn. L. Rev. 905 (1993).

Attorney General Opinions.
Americans with Disabilities Act — smoking — employees — state buildings, OAG 93-40, 1993 Tenn. AG LEXIS 38 (4/28/93).

T.C.A. § 4-4-121 does not prohibit smoking nor does it require a state agency to adopt a smoking policy, OAG 02-111, 2002 Tenn. AG LEXIS 118 (10/07/02).

T.C.A. § 4-4-121 authorizes administrative heads of state agencies to create smoking policies for buildings the administrative heads supervise or control; if an agency adopts a smoking policy, the agency must provide smokers with at least one designated indoor smoking area, OAG 02-111, 2002 Tenn. AG LEXIS 118 (10/07/02).

Where T.C.A. § 4-4-121 and the Children's Act for Clean Indoor Air, T.C.A. § 39-17-1601 et seq., conflict, the latter act governs, OAG 02-111, 2002 Tenn. AG LEXIS 118 (10/07/02).

The federal Pro-Children Act of 1994, compiled in 20 U.S.C. § 6081 et seq., which prohib-

its persons from smoking in any indoor facility where children receive routine or regular health, day care, education or library services, if these services are funded by the federal government, or through state or local governments, by federal grant, loan, loan guarantee, or contract, prevails over state law to the extent that state law conflicts with the federal act, OAG 02-111, 2002 Tenn. AG LEXIS 118 (10/07/02).

The State Capitol Commission may establish a policy that prohibits smoking in the Capitol or permits smoking in certain areas thereof subject to (i) the concurrence of the State Building Commission and (ii) compliance with the requirements of this section, OAG 03-099, 2003 Tenn. AG LEXIS 115 (8/13/03).

4-4-122. Employees who are victims of criminal offenses — Restraints on exercise of rights prohibited — Grievance procedure.

(a) No branch, department, agency or other subdivision of state government shall terminate, dismiss, demote or take any other disciplinary action against an employee of such entity who is the victim of a criminal offense solely because such employee takes any lawful action to cause or assist in causing the arrest, prosecution and conviction of the perpetrator of such offense.

(b) No branch, department, agency or other subdivision of state government shall by rule, regulation or policy prohibit an employee thereof who is the victim of a criminal offense from taking any lawful action to cause or assist in causing the arrest, prosecution and conviction of the perpetrator of such offense.

(c) Any state employee adversely affected by a violation of this section shall be entitled to file a grievance in accordance with the grievance procedure set out in § 8-30-318. The procedure and remedies set out in § 8-30-318 shall govern violations of this section.

History.
Acts 1991, ch. 239, § 1.

Compiler's Notes.
Acts 2012, ch. 800 rewrote the civil service provisions. Because of the amendments to the civil service provisions, the reference to grievance procedures and § 8-30-328 are no longer valid. For present comparable provisions on appeal provisions, see § 8-30-318.

4-4-123. Title IX implementation plan.

(a) Each entity of state government that is subject to the requirements of Title IX of the Education Amendments Act of 1972 (20 U.S.C. § 1681 et seq.), and regulations promulgated pursuant to Title IX, shall develop a Title IX implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title IX implementation plans of any subrecipients of federal funds through the state entity. Each such entity of state government shall submit annual Title IX compliance reports and implementation plan updates to the department of audit by October 1, 2008, and each October 1 thereafter. The reporting period shall cover the most recent full fiscal year. At least once each year, the department of audit shall publish a cumulative report of its findings and recommendations concerning compliance with the requirements of this section. The cumulative annual report shall be distributed to the governor, to each member of the general assembly, and to each library designated as a depository of state reports and documents.

(b) It is the legislative intent that any increased costs incurred by state

entities as a result of this section shall, to the extent legally available, be paid from federal funds available therefor.

History.
Acts 1998, ch. 758, §§ 1, 2; 2008, ch. 629, § 1.

Code Commission Notes. Former § 4-4-123(c), concerning a study to determine special actions to be taken to implement Title IX, was deemed obsolete by the code commission in 2005.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-4-124. Executive internal auditor.

(a) The governor shall appoint an executive internal auditor, who shall serve at the pleasure of the governor.

(b)(1) The executive internal auditor shall:

(A) Develop comprehensive internal audit standards for executive branch agencies, which shall:

(i) Incorporate the Standards for Internal Control in the Federal Government issued by the United States government accountability office, referred to as the "Green Book," as amended, revised, or modified;

(ii) Incorporate the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors, as amended, revised, or modified; and

(iii) Include any other standards deemed appropriate by the executive internal auditor;

(B) Provide best practices training for internal audit staff on internal audit standards, internal controls, and enterprise risk management;

(C) Provide peer review for internal audit staff within executive branch agencies consistent with standards set by the Institute of Internal Auditors;

(D) Review and approve internal audit plans for executive branch agencies; and

(E) Coordinate internal auditors on statewide issues.

(2) The executive internal auditor may exercise jurisdiction and control over the internal audit staff and the internal audit function of any executive branch agency.

(c) After October 1, 2016, the management and operations for the internal audit function of each executive branch agency shall be established in accordance with this section.

(d) If the executive internal auditor assumes jurisdiction and control over the internal audit function of an executive branch agency, then the agency's internal audit staff shall report to and serve at the pleasure of the executive internal auditor.

(e) If the executive internal auditor does not assume jurisdiction and control over the internal audit function of an executive branch agency, the agency's internal audit staff shall report to and serve at the pleasure of the commissioner. The executive internal auditor shall participate in the evaluations of any internal audit director under the jurisdiction and control of a commissioner.

(f) If an individual serves simultaneously as the commissioner of an agency and the executive internal auditor, then the internal audit staff within the commissioner's agency shall report to and serve at the pleasure of the commissioner. The governor or the governor's designee shall participate in the evaluations of any internal audit director under the jurisdiction and control of a commissioner serving simultaneously as the executive internal auditor.

(g) A commissioner shall not terminate any person serving as an internal audit director in an executive branch agency without the approval of the executive internal auditor. A commissioner serving simultaneously as the executive internal auditor shall not terminate any person serving as an internal audit director within the commissioner's agency without the approval of the governor or the governor's designee.

(h) The governor shall utilize existing executive branch resources and personnel in the implementation of this section. The governor is authorized to effectuate the purposes of this section in accordance with § 4-4-102.

(i) The commissioner of finance and administration is authorized, within existing resources, to develop cost allocation procedures and interagency billing for services associated with the implementation of this section.

(j) Nothing in this section shall expand or diminish the authority of the comptroller of the treasury or the offices of the comptroller of the treasury.

(k) As used in this section, unless the context otherwise requires:

(1) "Commissioner" means the chief executive officer of an agency;

(2) "Executive branch agency" or "agency":

(A) Means any unit organization of the executive branch of state government; and

(B) Does not include the political subdivisions of the state, institutions under the control of the University of Tennessee or the Tennessee board of regents, the judicial branch, or the legislative branch;

(3) "Governor's designee" means any individual designated by the governor other than the executive internal auditor or an employee of the executive internal auditor;

(4) "Internal audit director" means an individual who is:

(A) Primarily responsible for the internal audit function of an executive branch agency; and

(B) Responsible for the supervision, management, or control of internal audit staff, if any; and

(5) "Internal audit staff" includes any individual in an executive branch agency position who is involved in the internal audit function of an executive branch agency.

History.
Acts 2016, ch. 824, § 1.

Compiler's Notes.
Former § 4-4-124 (Acts 1998, ch. 1111, § 1), concerning the posting of applications for funds or grants on the state Internet site, was repealed by Acts 2003, ch. 355, § 1, effective June 16, 2003.

4-4-125. Review of regulatory board actions that may constitute potentially unreasonable restraint of trade.

(a) As used in this section:

(1) "Regulatory board" means any state board, commission, council, committee, or similar entity or body established by statute or rule that issues any license, certificate, registration, certification, permit, or other similar document for an occupation, profession, business, or trade in this state or otherwise regulates or controls any occupation, profession, business, or trade in this state. "Regulatory board" does not mean any board created by § 17-5-201, § 23-1-101, or the rules of the supreme court; and

(2) "Supervising official" means the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or the commissioner's or officer's designee.

(b) Each supervising official shall ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy. With respect to any action, other than rulemaking, taken by a regulatory board the supervising official shall:

(1) Evaluate whether the action may constitute a potentially unreasonable restraint of trade that requires further review; and

(2) If it is determined that an action requires further review pursuant to subdivision (b)(1):

(A) Provide notice to the regulatory board within ten (10) business days of the date the action was taken that the action is subject to further review;

(B) Review the full evidentiary record regarding the action and, if necessary, supplement the evidentiary record or direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(C) Conduct a review of the substance of the action, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(D) In writing:

(i) Approve the action if the supervising official determines that it is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board;

(ii) Remand the action to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(iii) Veto the action if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

(c) The supervising official may not:

(1) Be licensed by, or participate in or have a financial interest in an occupation, profession, business, or trade regulated by or otherwise affected or potentially affected by, the regulatory board whose action is subject to review under this section; or

(2) Be a voting or ex officio member of the regulatory board whose action is subject to review under this section.

(d) The supervising official's duties established pursuant to this section shall be carried out in a reasonably prompt manner and in accordance with any time limitations set forth in this section.

(e) If, within ten (10) business days of the date an action is taken, the supervising official provides notice to the chair of the regulatory board that the action is subject to further review pursuant to subdivision (b)(2), the action shall take effect upon the supervising official's approval but shall not take effect if the supervising official vetoes or remands the action.

(f) The supervising official's approval, remand, or veto of a regulatory board's action pursuant to subdivision (b)(2)(D) must include written justification for the decision and shall constitute the regulatory board's action with respect to that matter.

(g) A regulatory board shall provide to the supervising official adequate notice of its meetings.

(h) The supervising official must provide written notice to the chairs of the government operations committees of the senate and house of representatives of any veto of an action pursuant to this section within three (3) business days of the date of the veto. The government operations committees of the senate and house of representatives are authorized to conduct a hearing regarding the vetoed action at a subsequent, regularly scheduled meeting and may request the supervising official and a regulatory board representative to appear at the hearing. The government operations committees may meet jointly or separately. Nothing contained in this section shall be construed to authorize the government operations committees to delay or overturn the supervising official's veto, nor shall it limit the authority of the government operations committees to recommend legislation to the general assembly regarding the subject matter of a hearing conducted pursuant to this subsection (h).

History.
Acts 2017, ch. 230, § 1; T.C.A. 4-4-126.

Code Commission Notes. This section was renumbered from § 4-4-126 to § 4-4-125 by the authority of the Code Commission in 2021.

Compiler's Notes.
Former section 4-4-125 (Acts 2001, ch. 427, § 1; 2002, ch. 810, § 1; 2002, ch. 849, § 13; 2015, ch. 225, §§ 1-3; repealed by Acts 2016, ch. 722, § 9, effective July 1, 2016) concerned dissemination of social security numbers.

For the Preamble to the act relative to the doctrine of state antitrust immunity and the decision of the U.S. Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), please refer to Acts 2017, ch. 230.

CHAPTER 5

UNIFORM ADMINISTRATIVE PROCEDURES ACT

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4-5-402. Analysis of impact on small business.
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PART 1

GENERAL PROVISIONS

4-5-101. Short title.

This chapter may be cited as the "Uniform Administrative Procedures Act."

History.
Acts 1974, ch. 725, § 1; T.C.A., § 4-507.

Cross-References.
Applicability of chapter to health maintenance organizations, § 56-32-118.
Power to make rules and regulations, § 4-4-103.
Review of boards and commissions, title 27, ch. 9.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 2-12-1.
Tennessee Jurisprudence, 1 Tenn. Juris., Administrative Law, § 3; 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 8; 19 Tenn. Juris., Municipal Corporations, § 68; 21 Tenn. Juris., Public Service Commissions, § 3; 23 Tenn. Juris., Taxation, § 75.

Law Reviews.
Administrative Law — Ex Parte Contacts in Informal Rulemaking Under the Administrative Procedure Act, 52 Tenn. L. Rev. 67 (1984).
Bargaining Theory and Regulatory Reform: The Political Logic of Inefficient Regulation, 53 Vand. L. Rev. 599 (2000).
Bid Protests in Tennessee (Steven W. Feldman), 34 No. 5 Tenn. B.J. 27 (1998).
Designing Administrative Law for Adaptive Management, 67 Vand. L. Rev. 1 (2014).
Enlarging the Administrative Polity: Administrative Law and the Changing Definition of Pluralism, 1945-1970, 53 Vand. L. Rev. 1389 (2000).
Judicial Notice in Tennessee (Robert Banks, Jr. and Elizabeth T. Collins), 21 Mem. St. U.L. Rev. 431 (1991).
States, Agencies, and Legitimacy, 67 Vand. L. Rev. 443 (2014).
Symposium -- Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).
The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).
Unpacking the Force of Law, 66 Vand. L. Rev. 465 (2013).

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Scope.
3. Construction.
4. "Rule or Regulation" Defined.
5. Judicial Notice.
6. Alternative Procedure.

1. Purpose.
The purpose of this chapter was to bring together in one place the rules and regulations of all state administrative agencies to facilitate their convenient inspection by interested citizens. Chastain v. Tennessee Water Quality Control Board, 555 S.W.2d 113, 1977 Tenn. LEXIS 626 (Tenn. 1977).

2. Scope.

Where safety specifications in a state highway construction contract required contractors to use all necessary precautions and barricades, suitable and sufficient lights, signs, warnings and watchmen, breach did not constitute negligence per se, as such specifications were not valid administrative regulations having the effect of law. Williams v. Tillett Bros. Const. Co., 319 F.2d 300, 1963 U.S. App. LEXIS 4868 (6th Cir. Tenn. 1963), rehearing denied, Williams v. Tillett Bros. Constr. Co., 375 U.S. 949, 84 S. Ct. 356, 11 L. Ed. 2d 280 (1963), cert. denied, Williams v. Tillett Bros. Constr. Co., 375 U.S. 888, 84 S. Ct. 166, 11 L. Ed. 2d 118, 1963 U.S. LEXIS 488 (1963).

The action of the commissioner of revenue denying a claim for refund of sales and use taxes paid is not subject to judicial review under title 4, chapter 5. Volunteer Structures, Inc. v. Olsen, 640 S.W.2d 221, 1982 Tenn. LEXIS 346 (Tenn. 1982).

Before seeking judicial review of an inmate's sentence under the Uniform Administrative Procedures Act, the inmate must first seek a declaratory order regarding the sentence calculation from the department of correction pursuant to T.C.A. § 4-5-225(b). Bonner v. State Dep't of Corr., 84 S.W.3d 576, 2001 Tenn. App. LEXIS 608 (Tenn. Ct. App. 2001).

3. Construction.

The term de novo as applied to judicial review and as contemplated by T.C.A. § 67-5-1511 means a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence that either party wishes to adduce relevant to any issue. On the other hand the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, by its terms, restricts review to the record except for irregularities in procedure not shown by the record. Richardson v. Tennessee Assessment Appeals Com., 828 S.W.2d 403, 1991 Tenn. App. LEXIS 742 (Tenn. Ct. App. 1991), rehearing denied, — S.W.2d —, 1991 Tenn. App. LEXIS 783 (Tenn. Ct. App. Oct. 1, 1991).

4. "Rule or Regulation" Defined.

As used in this chapter, "rule or regulation" refers to a statement of general applicability, of a state administrative officer or agency that: (1) is legislative in nature and implements or prescribes law or policy, within the scope of the authority of such officer or agency, or (2) prescribes the rules of procedure or practice governing proceedings before such officer or agency; excepting, however, those rules and regulations relating to the organization or internal management of the agency. Chastain v. Tennessee Water Quality Control Board, 555 S.W.2d 113, 1977 Tenn. LEXIS 626 (Tenn. 1977).

5. Judicial Notice.

Rules adopted under this chapter are a proper subject of judicial notice. Tennessee State Board of Education v. Cobb, 557 S.W.2d 276, 1977 Tenn. LEXIS 672 (Tenn. 1977).

6. Alternative Procedure.

In termination of tenured state university faculty proceedings, T.C.A. § 49-8-302 — 49-8-304 apply, rather than the more general provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Frye v. Memphis State University, 671 S.W.2d 467, 1984 Tenn. LEXIS 927 (Tenn. 1984).

4-5-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Administrative judge" means an agency member, agency employee or employee or official of the office of the secretary of state, licensed to practice law and authorized by law to conduct contested case proceedings pursuant to § 4-5-301;

(2) "Agency" means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases;

(3) "Contested case" means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceeding may include rate making; price fixing; granting of certificates of convenience and necessity; the making, review or equalization of tax assessments; the granting or denial of licenses, permits or franchises where the licensing board is not required to grant the licenses, permits or franchises upon the payment of a fee or the

finding of certain clearly defined criteria; and suspensions of, revocations of, and refusals to renew licenses. An agency may commence a contested case at any time with respect to a matter within the agency's jurisdiction;

(4) "Hearing officer" means an agency member, agency employee or employee or official of the office of the secretary of state, not licensed to practice law, and authorized by law to conduct a contested case proceeding pursuant to § 4-5-301;

(5) "License" includes the whole or part of any agency, permit, certificate, approval, registration, charter or similar form of permission required by law;

(6) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license;

(7) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of a specific person or persons;

(8) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(9) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, including another agency;

(10) "Policy" means any statement, document, or guideline prepared or issued by any agency pursuant to its delegated authority that merely defines or explains the meaning of a statute or a rule. "Policy" also means any statement, document, or guideline concerning only the internal management of state government that does not affect private rights, privileges, or procedures available to the public. For purposes of this subdivision (10), "internal management" means the administration of an agency's internal operations for the purpose of facilitating operational effectiveness and efficiency;

(11) "Publication" means a posting of materials on the appropriate website by the secretary of state that have been submitted in accordance with this chapter or any other information for which the secretary of state is responsible;

(12) "Rule" means any agency regulation, standard, statement, or document of general applicability that is not a policy as defined in subdivision (10) that:

(A) Describes the procedure or practice requirements of an agency; or

(B) Implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency. "Rule" includes the establishment of a fee and the amendment or repeal of a prior rule. "Rule" does not include:

(i) Declaratory orders issued pursuant to § 4-5-223;

(ii) Intra-agency memoranda;

(iii) General policy statements that are substantially repetitious of existing law;

(iv) Agency statements that:

(a) Relate to the use of the highways and are made known to the public by means of signs or signals; or

(b) Relate to the curriculum of individual state-supported institu-

tions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;

(v) Rate filings pursuant to title 56, chapters 5 and 6; or

(vi) Statements concerning inmates of a correctional or detention facility, or statements concerning offenders who are serving a sentence under probation or parole in the community; and

(13) "Small business" means a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees.

History.

Acts 1974, ch. 725, § 2; 1975, ch. 370, § 1; 1976, ch. 388, § 1; 1976, ch. 573, § 1; T.C.A., § 4-508; Acts 1982, ch. 874, § 1; 1984, ch. 728, §§ 9, 10; 1998, ch. 740, § 1; 2007, ch. 464, § 1; 2009, ch. 566, § 1; 2018, ch. 929, §§ 1, 2.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Textbooks.

Tennessee Jurisprudence, 1 Tenn. Juris., Administrative Law, § 3; 2 Tenn. Juris., Appeal and Error, § 268; 6 Tenn. Juris., Colleges and Universities, § 10; 16 Tenn. Juris., Intoxicating Liquors, § 8; 16 Tenn. Juris., Judgments and Decrees, § 94.

Law Reviews.

How Many Bites Are Enough? The Supreme Court's Decision in University of Tennessee v. Elliott (Robert P. Morris), 55 Tenn. L. Rev. 205 (1988).

Attorney General Opinions.

Memorandum of agreement between division of solid waste management and division of water pollution control not a rule subject to Uniform Administrative Procedures Act, OAG 95-084, 1995 Tenn. AG LEXIS 94 (8/15/95).

Curriculum guidelines not rules subject to formal rulemaking procedures, OAG 99-010, 1999 Tenn. AG LEXIS 4 (1/25/99).

It was not necessary for the zero tolerance policy and procedures memorandum of the department of human services regarding enforcement of child care statutes and regulations to be promulgated as a rule, OAG 00-079, 2000 Tenn. AG LEXIS 82 (5/1/00).

The pharmacy based immunization program guidelines adopted by the Tennessee board of pharmacy are "rules" within the meaning of T.C.A. § 4-5-102, OAG 01-091, 2001 Tenn. AG LEXIS 82 (6/4/01).

The HUD regulations do not preempt the Administrative Procedures Act under any of the theories of implied preemption. OAG 10-105, 2010 Tenn. AG LEXIS 111 (10/15/10).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Agencies.
3. Contested Case.
4. Rules.
5. Summary Judgment.

1. Construction.

A hearing officer appointed by the state board of education under § 49-10-601 constitutes an "agency" within the definition of this section and review conducted of placement constitutes a "contested case" under this section. Ogden v. Kelley, 594 S.W.2d 702, 1980 Tenn. LEXIS 419 (Tenn. 1980).

2. Agencies.

The alcoholic beverage commission is within the terms of this section and hence is controlled by this chapter. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

There is no doubt that this chapter applies to the public service commission. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

The state board of regents is an "agency" within the definition of this section. State Board of Regents of University v. Gray, 561 S.W.2d 140, 1978 Tenn. LEXIS 573 (Tenn. 1978).

The board of trustees of the Tennessee consolidated retirement system is an agency within T.C.A. § 4-5-102; and the courts are prohibited from entertaining a declaratory judgment suit in respect to the validity or applicability of a statute unless the board has refused to issue a declaratory order. Crawford v. Tennessee Consol. Retirement System, 732 S.W.2d 293, 1987 Tenn. App. LEXIS 2624 (Tenn. Ct. App. 1987).

The Tennessee Department of Environment and Conservation (TDEC) and the Division of Underground Storage Tanks (Division) were

not "agencies" for purposes of the Uniform Administrative Procedures Act (UAPA), and a policy of the Division requiring owners of tanks to make site checks was not a "rule" subject to UAPA compliance. Christian v. Tennessee Petroleum Underground Storage Tank Bd., 928 S.W.2d 927, 1996 Tenn. App. LEXIS 150 (Tenn. Ct. App. 1996).

The district public defenders conference is not an agency subject to the provisions of the Uniform Administrative Procedures Act (UAPA) because it is not required or authorized to make rules and determine contested cases within the meaning of the UAPA and the court has no subject matter jurisdiction to hear a declaratory judgment action brought under the UAPA challenging the salary of an assistant district public defender. Moody v. State Dist. Pub. Defenders Conf., 980 S.W.2d 385, 1998 Tenn. App. LEXIS 222 (Tenn. Ct. App. 1998).

Because an action was filed on behalf of the department of commerce and insurance, a department as provided in T.C.A. § 4-5-102, and because it was filed by and through the attorney general, a state officer under the Tennessee constitution and for the purposes of § 4-5-102, the Equal Access to Justice Act applied to the case. State v. Thompson, 197 S.W.3d 685, 2006 Tenn. LEXIS 632 (Tenn. 2006).

3. Contested Case.

In the first sentence of the definition, "declaratory proceedings" modifies and limits the general term "proceeding." Horne v. Cox, 551 S.W.2d 690, 1977 Tenn. LEXIS 530 (Tenn. 1977).

An audit is not a "contested case" within this section, but is the methodical examination of records with intent to verify their accuracy, and hence audit findings are not entitled to judicial review under T.C.A. § 4-5-322. National Health Corp. v. Snodgrass, 555 S.W.2d 403, 1977 Tenn. LEXIS 630 (Tenn. 1977).

Action of attorneys general in seeking a declaratory judgment as to their retirement rights was a contested case. Crawford v. Tennessee Consol. Retirement System, 732 S.W.2d 293, 1987 Tenn. App. LEXIS 2624 (Tenn. Ct. App. 1987).

Proceeding on hackney pony racing license was not a contested case because the commission was not required to afford the applicant a hearing before acting on its application. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Com., 798 S.W.2d 531, 1990 Tenn. App. LEXIS 587 (Tenn. Ct. App. 1990).

Because college dean of student affairs was not a support staff employee, the dean had no statutory right to a contested case hearing regarding the termination of the dean's employment contract; accordingly, the employment dispute with the college did not constitute a contested case under T.C.A. § 4-5-102. Dishmon v. Shelby State Community College, 15 S.W.3d 477, 1999 Tenn. App. LEXIS 685 (Tenn. Ct. App. 1999).

4. Rules.

Statements of policy of state-supported institutions of post-secondary education that deal with the discipline or housing of students are "rules" within the meaning of this section and must meet this chapter's requirements in order to be valid. State Board of Regents of University v. Gray, 561 S.W.2d 140, 1978 Tenn. LEXIS 573 (Tenn. 1978).

Where university rules proscribing aggravated assault merely repeated existing laws prohibiting such conduct they were excluded by definition and were thus validly applied without compliance with this chapter. State Board of Regents of University v. Gray, 561 S.W.2d 140, 1978 Tenn. LEXIS 573 (Tenn. 1978).

A policy is not a rule under the Uniform Administrative Procedures Act if the policy concerns internal management of state government, such as prison discipline, and if the policy does not affect the private rights, privileges or procedures available to the public. Mandela v. Campbell, 978 S.W.2d 531, 1998 Tenn. LEXIS 583 (Tenn. 1998).

Inmate was not entitled to a declaratory judgment stating that because of his medical condition he should be drug tested by patch rather than urine sample when the Declaratory Judgment Act, T.C.A. § 29-14-101 et seq., did not permit the filing of a suit against the state to construe statutes. Fuller v. Campbell, 109 S.W.3d 737, 2003 Tenn. App. LEXIS 36 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 533 (Tenn. May 27, 2003), appeal denied, —S.W.3d —, 2003 Tenn. LEXIS 564 (Tenn. 2003).

The chancery court lacked the jurisdiction to hear a declaratory judgment action against the department of correction, as T.C.A. §§ 4-5-223 and 4-5-225 did not apply to the internal management of state government if the policy did not affect the private rights, privileges, or procedures available to the public. Fuller v. Campbell, 109 S.W.3d 737, 2003 Tenn. App. LEXIS 36 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 533 (Tenn. May 27, 2003), appeal denied, —S.W.3d —, 2003 Tenn. LEXIS 564 (Tenn. 2003).

Inmate failed to show that Tennessee's lethal injection protocol violated due process under U.S. Const. amend. XIV, or Tenn. Const. art. I, § 1 because the inmate failed to cite authority that the adoption of the lethal injection protocol violated procedural due process and the method of lethal injection was created by the legislature and that the implementation of lethal injection was left to the Department of Correction pursuant to T.C.A. § 40-23-114(c); further, the Department was not subject to the notice and approval provisions of the Uniform Administrative Procedures Act (UAPA) because De-

partment procedures were not "rules" as defined by the UAPA because they fit squarely into the exceptions under T.C.A. § 4-5-102(10)(A), (G) (now § 4-5-102(12)(A), (B)(vi). Abdur'Rahman v. Bredesen, 181 S.W.3d 292, 2005 Tenn. LEXIS 828 (Tenn. 2005), cert. denied, 547 U.S. 1147, 126 S. Ct. 2288, 164 L. Ed. 2d 813, 2006 U.S. LEXIS 3970 (2006).

5. Summary Judgment.

Grant of summary judgment in favor of the Tennessee Board of Education did not improperly denied the teacher the opportunity for a hearing concerning the revocation of his license, because the administrative law judge (ALJ) was not required to conduct a pointless evidentiary hearing, when the teacher had the opportunity to make all of his arguments to the ALJ in his response to the Board's motion for summary judgment, the ALJ considered whether lesser remedies were available to the Board, and the teacher had no evidence to present, only legal arguments that could be fully considered in the context of the Board's motion for summary judgment. Yokley v. State Bd. of Educ., 305 S.W.3d 523, 2009 Tenn. App. LEXIS 337 (Tenn. Ct. App. May 19, 2009), appeal denied, — S.W.3d —, 2009 Tenn. LEXIS 755 (Tenn. Nov. 23, 2009).

4-5-103. Construction of chapter.

(a)(1) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination and shall be applied accordingly.

(2) Administrative agencies shall have no inherent or common law powers, and shall only exercise the powers conferred on them by statute or by the federal or state constitutions.

(b) This chapter does not repeal § 65-2-110, and where there is a conflict between this chapter and that section, that section shall control. In any other case of conflict between this chapter and any statute, whether general or specific, this chapter shall control; however, compliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of this code.

(c) Nothing in this chapter shall be held to modify or repeal the statutes with respect to payment of taxes under protest and suits for the recovery thereof.

History.

Acts 1974, ch. 725, § 19; 1975, ch. 370, § 15; 1978, ch. 938, §§ 14, 15; T.C.A., §§ 4-525, 4-5-119; Acts 1982, ch. 874, §§ 2, 25, 26; 2016, ch. 859, § 1.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 8.

Law Reviews.

Bid Protests in Tennessee (Steven W. Feldman), 34 No. 5 Tenn. B.J. 27 (1998).

NOTES TO DECISIONS

Analysis

1. Application of Chapter.
2. Effect on Other Statutes.
3. Federal Law.

1. Application of Chapter.

The legislative intent that this chapter apply to all administrative boards and agencies is unmistakably clear. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

The action of the commissioner of revenue denying a claim for refund of sales and use taxes paid is not subject to judicial review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Volunteer Structures, Inc. v. Olsen, 640 S.W.2d 221, 1982 Tenn. LEXIS 346 (Tenn. 1982).

Sanctions imposed by the administrative tribunal upon the insurance agent were clearly warranted in law where no basis existed for

finding that the sanction of revocation of license was without justification in fact; neither the chancery court nor the court of appeals was empowered to substitute judicial judgment in the place of the judgment of an administrative tribunal acting within the scope of its statutory authority, and neither the chancellor nor the appellate court could soften the sanctions imposed by the administrative tribunal on the basis that either court felt that the sanctions imposed were too harsh. Mosley v. Tenn. Dep't of Commerce & Ins., 167 S.W.3d 308, 2004 Tenn. App. LEXIS 784 (Tenn. Ct. App. 2004), appeal denied, Mosley v. Tenn. Ins. Div., — S.W.3d —, 2005 Tenn. LEXIS 448 (Tenn. May 9, 2005).

Legislature promulgated the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq., to clarify and bring uniformity to the procedures of administrative agencies and judicial review of their decisions, under T.C.A. § 4-5-103(a). Tidwell v. City of Memphis, 193 S.W.3d 555, 2006 Tenn. LEXIS 433 (Tenn. 2006).

2. Effect on Other Statutes.

The provisions for judicial review of orders of the alcoholic beverage commission in T.C.A. § 57-3-214 are superseded and repealed by this section to the extent of any conflict or inconsistency between that section and the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

By its terms, title 4, chapter 5 supersedes and repeals earlier procedural statutes applicable to state agencies that conflict with it, with a few exceptions. Ogden v. Kelley, 594 S.W.2d 702, 1980 Tenn. LEXIS 419 (Tenn. 1980).

3. Federal Law.

The Tennessee Administrative Procedures Act provides procedural safeguards for contested cases comparable to those provided by the corresponding federal law, 5 U.S.C. § 554 et seq. Watts v. Burkhart, 978 F.2d 269, 1992 U.S. App. LEXIS 27830 (6th Cir. Tenn. 1992).

4-5-104. Suspension of provisions when necessary to avoid loss of federal funds.

(a) The governor may exempt an agency from complying with any provision of this chapter where necessary to conform to any provisions of federal law or rules and regulations as a condition to the receipt of federal granted funds provided that:

(1) The governor determines that, because of a conflict between this chapter and federal law or rules and regulations, receipt of federal funds either authorized, anticipated, or appropriated is placed in jeopardy;

(2) The governor determines that the alternative procedure necessary to satisfy federal funding requirements does not abrogate basic fairness;

(3) The governor exempts that agency from only those provisions of the chapter compliance with which would jeopardize federal funding;

(4) The governor states in detail and in writing the governor's findings under subdivisions (a)(1) and (2), the extent of the agency's exemption under subdivision (a)(3), and the alternative procedures to replace those procedures from which the agency is exempted under this section;

(5) The governor files a copy of such written statement with the secretary of state;

(6) The effectiveness of the exemption shall in no case be extended beyond thirty (30) days after the date of adjournment of the next session of the general assembly lasting ten (10) legislative days or longer; and that if the general assembly fails to act within such legislative session to make by law such exemption permanent, then the governor may not at a later time reinstitute the same exemption; and

(7) The governor may at any time determine that the federal funding is no longer jeopardized and at such time revoke the governor's exemption of an agency from any particular provision of the chapter, which revocation shall

be effective upon the governor filing a written statement to that effect with the secretary of state.

(b) Such administrative latitude is intended to facilitate the operation of state government and cooperation between the state of Tennessee and the United States government and shall not be used to create job positions that are intended to exist beyond the federal funding, nor to create any program requiring the expenditure of state funds not specifically directed by the general assembly, or that are intended to exist beyond the federal funding.

History.
Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-123(d); Acts 1982, ch. 874, §§ 3, 15, 21, 25, 26.

4-5-105. Informal settlements.

Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies may establish specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter pursuant to informal procedures.

History.
Acts 1982, ch. 874, § 4.

Attorney General Opinions.
Mediation by the Tennessee Human Rights Commission, OAG 94-115, 1994 Tenn. AG LEXIS 118 (10/6/94).

NOTES TO DECISIONS

1. Agreement Upheld.
Agreement entered between the Tennessee board of registration in podiatry and a podiatrist that precluded the podiatrist from reapplying for a license in the state was in conformance with the board's authority to enter into informal settlement agreements pursuant to T.C.A. § 4-5-105, and the provision was upheld when the podiatrist made a knowing and voluntary decision to enter into the agreement to settle numerous claims that had been asserted against the podiatrist. Bacardi v. Tenn. Bd. of Registration in Podiatry, 124 S.W.3d 553, 2003 Tenn. App. LEXIS 402 (Tenn. Ct. App. 2003), appeal denied, Bacardi v. Tn. Bd. of Registration in Podiatry, — S.W.3d —, 2003 Tenn. LEXIS 872 (Tenn. 2003).

4-5-106. Application.

(a) This chapter shall not apply to the military, the governor, the general assembly, the state building commission, the state funding board or the courts, nor shall it apply to county and municipal boards, commissions, committees, departments or officers.

(b) Disciplinary and job termination proceedings for inmates under the supervision of the department of correction or juveniles under the supervision of the department of children's services shall not be considered "contested cases" as defined by § 4-5-102.

(c) Sections 4-5-105, 4-5-219, 4-5-223, 4-5-225 and 4-5-301 — 4-5-323 shall not apply to the board of claims, the state election commission or the board of parole.

(d) The rulemaking and publication provisions of this chapter shall not apply to proclamations promulgated under title 70, and the promulgation, filing and publication provisions of such title shall control, except that the secretary of state shall publish on the administrative register website current and effective proclamations in the same manner that rules and other notices are published under § 4-5-220. The text of proclamations shall be published on the administrative register website under the proclamation section and shall have the same weight and effect prescribed in § 4-5-221(c), for the text of rules so published. The wildlife resources agency shall keep an original copy of all proclamations from which the effective dates of all proclamations can be determined.

(e) Sections 4-5-303, 4-5-309, 4-5-311(a), (b) and (c), 4-5-312(c), 4-5-314(b), 4-5-315 — 4-5-318, 4-5-322 and 4-5-323, shall not apply to the department administering the Tennessee Employment Security Law, compiled in title 50, chapter 7.

(f) This chapter shall not apply to revenue rulings and letter rulings issued by the commissioner of revenue.

History.

Acts 1975, ch. 370, § 2; 1976, ch. 685, § 1; 1977, ch. 467, § 1; 1978, ch. 938, § 17; T.C.A., §§ 4-529, 4-5-123; Acts 1982, ch. 874, § 5; 1983, ch. 103, § 1; 1988, ch. 562, § 2; 1989, ch. 278, § 21; 1989, ch. 454, § 3; 1996, ch. 1079, § 16; 1998, ch. 1049, § 1; 1999, ch. 520, § 26; 2000, ch. 864, § 1; 2007, ch. 183, § 1; 2009, ch. 566, §§ 2, 3.

Compiler's Notes.

Former § 4-5-106 (Acts 1974, ch. 725, § 6; 1975, ch. 370, § 13; T.C.A., § 4-512), concerning declaratory judgments on the validity of rules, was repealed by Acts 1982, ch. 874, § 35. For new law, see § 4-5-225.

Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

Acts 1998, ch. 1049, which substituted "board of probation and parole" for "board of paroles" in (c), provided in § 68 that the act take effect May 18, 1998. Section 68 further provided that the implementation of the act take effect July 1, 1999; provided, that the act may be implemented before that date upon the request of the board through its chair, with the approval of the commissioner of personnel and the commissioner of finance and administration, with review and comment by the select oversight committee on correction.

Acts 2007, ch. 183, § 8 provided that § 1 of the act shall apply to claimants filing initial claims on or after July 2, 2007.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Acts 2012, ch. 727, § 1 amended § 4-3-104, which concerns name changes of departments and divisions, to provide that references to the board of probation and parole, formerly referred to in this section, are deemed references to the board of parole. This correction was made in subsection (c).

Cross-References.

Commissioner of revenue, revenue and letter rulings, § 67-1-109.

Powers of commissioner and department of revenue, § 67-1-102.

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Disciplinary Procedures.

1. Applicability.

The department of correction's policies affecting the custody and control of inmates need not be promulgated as rules under the Uniform Administrative Procedures Act. Ogburn v. Tennessee Dep't of Correction, 983 S.W.2d 677, 1998 Tenn. App. LEXIS 26 (Tenn. Ct. App. 1998).

Trial court did not abuse its discretion in its determination that an inmate's administrative segregation status was non-punitive because it was based upon security concerns because he

had a history of assaults and disruptive behavior and, that, as such, the common law writ of certiorari was not the proper means for the inmate to challenge his status. Clark v. Rose, 183 S.W.3d 669, 2005 Tenn. App. LEXIS 447 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1114 (Tenn. Dec. 5, 2005).

Trial court properly dismissed an inmate's petition under T.C.A. §§ 27-8-101 and 27-9-101 for common law writ of certiorari against the Tennessee Department of Correction's (TDOC) and TDOC officials because the inmate failed to seek a declaratory order from TDOC as required by the Uniform Administrative Procedures Act (UAPA), T.C.A. § 4-5-225(b); the UAPA does not govern inmate challenges to decisions of the Tennessee Board of Probation and Parole, T.C.A. § 4-5-106(c). Stewart v. Schofield, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

Because an inmate was not entitled to multiple release eligibility dates and consideration for custodial parole, his petition alleging that the Tennessee Board of Probation and Parole and Board officials deprived him of the privilege to be heard for custodial parole failed to state a claim on which relief could be granted; therefore, the trial court properly granted the motions of the Board and officials to dismiss the inmate's petition for common law writ of certiorari pursuant to T.C.A. §§ 27-8-101 and 27-9-101. Stewart v. Schofield, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

In promulgating an executive order which established the Commission for Judicial Appointments, the Governor did not violate the Uniform Administrative Procedures Act. Durham v. Haslam, — S.W.3d —, 2016 Tenn. App. LEXIS 236 (Tenn. Ct. App. Apr. 1, 2016), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 517 (Tenn. July 21, 2016), cert. denied, 196 L. Ed. 2d 522, 137 S. Ct. 641, — U.S. —, 2017 U.S. LEXIS 665 (U.S. Jan. 9, 2017).

2. Disciplinary Procedures.

T.C.A. § 4-5-106 merely exempts certain agency decisions from review under the Uniform Administrative Procedures Act (UAPA), it does not imply that prison disciplinary procedures are subject to the UAPA and it does not address scrutiny of those disciplinary procedures. Mandela v. Campbell, 978 S.W.2d 531, 1998 Tenn. LEXIS 583 (Tenn. 1998).

4-5-107. Majority needed to determine rules or contested cases — Exceptions.

Unless otherwise provided by statute, no state board, commission or department composed of two (2) or more members or commissioners shall make any rule or declaratory rulings or finally determine any contested case, as the terms "rule" and "contested case" are defined in this chapter, unless a majority of the members or commissioners is present.

History.

Acts 1975, ch. 97, § 1; T.C.A., §§ 4-528, 4-5-122(a); Acts 1982, ch. 874, § 6.

Compiler's Notes.

Former § 4-5-107 (Acts 1974, ch. 725, § 7; 1975, ch. 370, § 14; T.C.A., § 4-513), concerning declaratory ruling by agencies, was repealed by Acts 1982, ch. 874, § 34. For new law, see § 4-5-223.

4-5-108. Legislative proposals affecting administrative procedure — Prior study.

(a) Any legislation that, in whole or in part, amends or repeals any provision of this chapter, or any legislation that reestablishes, restructures or otherwise delegates any type of rulemaking authority to any new or preexisting governmental entity to which this chapter applies, shall be referred to the government operations committee according to the rules of the senate and the rules of the house of representatives. The government operations committees of each house shall then review the legislation and shall recommend that the legislation be considered for passage or shall recommend against passage to the appropriate standing committee.

(b) Except when the government operations committee is designated as the appropriate standing committee, nothing contained in this section shall be

construed to authorize the government operations committee to delay or prevent consideration of such legislation by the appropriate house by withholding its recommendation.

(c) Nothing contained within this chapter shall be construed to prevent the government operations committee from being considered as an appropriate standing committee to consider legislation that amends or repeals any provision of this chapter.

History.

Acts 1980, ch. 454, § 1; T.C.A., § 4-5-131; Acts 1982, ch. 874, §§ 7, 42; 1983, ch. 479, § 1; 2009, ch. 566, § 4.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Attorney General Opinions.

Authority of senate government operations committee, OAG 99-113, 1999 Tenn. AG LEXIS 113 (5/14/99).

PART 2

RULEMAKING AND PUBLICATIONS

4-5-201. Petitions for or against rules.

(a) Except where the right to petition for a rule is restricted by statute to a designated group or except where the form of procedure for such petition is otherwise prescribed by statute, any municipality, corporation or any five (5) or more persons having an interest in a rule may petition an agency requesting the adoption, amendment or repeal of such rule.

(b) Such petition shall state clearly and concisely:

(1) The substance or nature of the rulemaking that is requested;

(2) The reasons for the request and the petitioner's interest in the request; and

(3) Reference to the authority of the agency to take the action that is requested.

(c) After submission of a petition, the agency shall, as promptly as is consistent with the orderly dispatch of its business, deny the request or grant the same or provide for some modified form of the rule to be proposed. If the agency denies the petition, it shall promptly give notice thereof to the person who filed the petition. If the agency grants the petition in whole or in part, it shall proceed to meet the rulemaking requirements set out in this chapter.

History.

Acts 1974, ch. 725, § 5; 1975, ch. 370, § 9; T.C.A., §§ 4-511, 4-5-105; Acts 1982, ch. 874, § 9; 2021, ch. 531, § 1.

Compiler's Notes.

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.

The 2021 amendment substituted "rule to be proposed" for "proposed rule" in the first sentence of (c).

Effective Dates.

Acts 2021, ch. 531, § 16. July 1, 2021.

Cross-References.

Public hearing on endangered species list, § 70-8-305.

Law Reviews.

Nonacquiescence: Outlaw Agencies, Imperial Courts, and the Perils of Pluralism (Deborah Maranville), 39 Vand. L. Rev. 471 (1986).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978)

(Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-202. When hearings required.

(a) An agency shall precede all its rulemaking with notice and a public hearing unless:

(1) The rule is adopted as an emergency rule; or

(2)(A) The rule is promulgated as a proposed rule.

(B) As used in this section, "proposed rule" and "proposed written rule" mean a rule that:

(i) Involves minor, nonsubstantive modifications, including, but not limited to, clerical updates;

(ii) Is approved by the joint government operations committee of the house of representatives and the senate pursuant to subdivision (a)(2)(C)(ii);

(iii) Repeals an existing rule; or

(iv) Eliminates or reduces a fee contained in an existing rule.

(C)(i) Any rule promulgated as a proposed rule must be posted to the administrative register website within the secretary of state's website within seven (7) days of receipt, together with a statement that the agency will adopt the proposed rule without a public hearing unless within ninety (90) days after filing of the proposed rule with the secretary of state, a petition for a public hearing on the proposed rule is filed by ten (10) persons who will be affected by the rule, an association of ten (10) or more members, a municipality, or by a majority vote of any standing committee of the general assembly. If an agency receives such a petition, the agency shall not proceed with the proposed rulemaking until the agency has given notice and held a hearing as provided in this section. The agency shall forward the petition to the secretary of state. The secretary of state is not required to compile all filings of the preceding month into one (1) document.

(ii) An agency may petition the joint government operations committee of the house of representatives and the senate to authorize a rule to be a proposed rule when the agency has given proper notice and held a public hearing pursuant to this part, but the rule is withdrawn to make nonsubstantive modifications to the rule prior to the review of the rule by the joint government operations committee.

(b) Subdivision (a)(2) does not apply if another statute specifically requires the agency to hold a hearing prior to adoption of the rule under consideration.

(c) The secretary of state shall prescribe rules governing the manner and form in which proposed written rules shall be prepared by the agencies for submission for publication under subdivision (a)(2). The secretary of state may require the online submission of rules and related filings pursuant to this part. The secretary of state may refuse to accept for publication any proposed rule that does not conform to such requirements.

History.

Acts 1975, ch. 370, § 8; 1978, ch. 938, § 3; T.C.A., § 4-530; Acts 1980, ch. 729, § 1; T.C.A., § 4-5-124; Acts 1982, ch. 874, § 10; 2009, ch. 566, § 5; 2014, ch. 782, § 1; 2015, ch. 502, § 1; 2016, ch. 576, § 1; 2021, ch. 531, § 2.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.

The 2021 amendment rewrote (a), which read, "(a) An agency shall precede all its rulemaking with notice and a public hearing unless:

"(1) The rule is adopted as an emergency rule; or

"(2) The proposed rule is posted to the administrative register website within the secretary of state's website within seven (7) days of receipt, together with a statement that the agency will adopt the proposed rule without a public hearing unless within ninety (90) days after filing of the proposed rule with the secretary of state, a petition for a public hearing on the proposed rule is filed by ten (10) persons who will be affected by the rule, an association of ten (10) or more members, a municipality or by a majority vote of any standing committee of the general assembly. If an agency receives such a petition, it shall not proceed with the proposed rulemaking until it has given notice and held a hearing as provided in this section. The agency shall forward the petition to the secretary of state. The secretary of state shall not be required to compile all filings of the preceding month into one (1) document."

Effective Dates.

Acts 2021, ch. 531, § 16. July 1, 2021.

Law Reviews.

State Rulemaking Under the Administrative Procedures Act — Legal Remedies (William N. Bates), 16 Tenn. B.J. No. 2, 21 (1980).

Attorney General Opinions.

The pharmacy based immunization program guidelines adopted by the Tennessee board of pharmacy are void as they were not promulgated as rules under the provisions of the Uniform Administrative Procedures Act, OAG 01-091, 2001 Tenn. AG LEXIS 82 (6/4/01).

4-5-203. Notice of hearing.

(a) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall:

(1)(A) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register website and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register website. Such notice of a hearing shall remain on the website until the date of such hearing;

(B) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall make copies of the rule available in redline form to persons in attendance at the hearing. As used in this subsection (a), "redline form" has the same meaning as defined in § 4-5-226(i)(2)(B);

(2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the rule being proposed.

(b) Except as otherwise permitted by § 4-5-204(e), notice through publication on the administrative register website shall be given at least forty-five (45) days prior to the date set for the hearing and shall be deemed to have been given seven (7) days from the date notice was transmitted to the secretary of state for such publication.

(c) The notice required under subdivision (a)(1)(A) shall include:

(1) A statement of the time and place at which the hearing is to be held;

(2)(A) The express terms of the rule being proposed; provided, that an informative summary reasonably calculated to give notice to interested parties may be substituted for the express terms of the rule being proposed if:

(i) The express terms of the rule being proposed are filed with the secretary of state;

(ii) The secretary of state determines that publication of the entire text of the rule being proposed would be impractical; and

(iii) The complete text of the express terms of the rule being proposed is made available by the secretary of state or the agency for public inspection and copying;

(B) Nothing in this section shall be construed to preclude an agency from making changes in the rule being proposed after the public hearing, so long as the changes are within the scope of the rulemaking notice filed with the secretary of state;

(3) Insofar as practicable, a reference to the statutory authority pursuant to which the agency proposed to adopt the rule; and

(4) Any additional matter that may be prescribed by statute applicable to the specific rule or class of rules under consideration.

(d) Failure of any person to receive notice of a hearing on a rule being proposed is not grounds for invalidating the resulting rule if notice of the hearing was published as provided in subdivision (a)(1).

(e) The secretary of state shall prescribe rules governing the manner and form in which written notice of hearings shall be transmitted by the agencies to the secretary of state for publication in the notice section of the administrative register website. The secretary of state may require the online submission of notices of hearing and related filings pursuant to this part. The secretary of state may refuse to accept for publication any notice of hearing transmitted that does not conform to such requirements, in which case transmission of notice shall be deemed not to have been satisfied under subdivision (a)(1) and subsection (b).

(f)(1) Except as provided in subdivision (f)(2), a hearing shall be conducted prior to the adoption of a permanent rule if such rule was filed previously as an emergency rule pursuant to § 4-5-208.

(2) A hearing shall not be required if the emergency rule was required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

History.

Acts 1975, ch. 370, § 8; T.C.A., §§ 4-531, 4-5-125; Acts 1982, ch. 874, § 11; 1986, ch. 738, § 6; 1991, ch. 346, §§ 1, 2; 2009, ch. 566, §§ 6, 7; 2010, ch. 1125, § 1; 2014, ch. 782, § 2; 2016, ch. 576, § 2; 2018, ch. 611, §§ 1, 2; 2021, ch. 531, §§ 3-5.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Acts 2010, ch. 1125, § 2 provided that the act, which added subsection (f), shall apply to all rules and regulations filed with the secretary of state after July 1, 2010.

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.

The 2021 amendment substituted "rule being proposed" for "proposed rulemaking" in (a)(2) and (c)(2)(A); and substituted "a rule being proposed" for "proposed rulemaking" in (d).

Effective Dates.

Acts 2021, ch. 531, § 16. July 1, 2021.

Law Reviews.

State Rulemaking Under the Administrative Procedures Act — Legal Remedies (William N. Bates), 16 Tenn. B.J. No. 2, 21 (1980).

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

Attorney General Opinions.

The pharmacy based immunization program guidelines adopted by the Tennessee board of pharmacy are void as they were not promulgated as rules under the provisions of the Uniform Administrative Procedures Act, OAG 01-091, 2001 Tenn. AG LEXIS 82 (6/4/01).

NOTES TO DECISIONS

Analysis

1. Insurance.
2. Modification of Proposed Rule.

1. Insurance.

In order to promulgate a rule affecting the title insurance business, the commissioner must comply substantially with the notice requirements of both T.C.A. §§ 4-5-203(a)(1) and 56-35-122. U.S. Life Title Ins. Co. v. Department of Commerce & Ins., 770 S.W.2d 537, 1988 Tenn. App. LEXIS 575 (Tenn. Ct. App. 1988).

2. Modification of Proposed Rule.

It would be unreasonable and inefficient to require an agency to publish the exact text of a proposed rule in order to obtain public reaction thereto and then require a republication and rehearing for every alteration made in the proposed rule before final adoption. Tennessee Envtl. Council v. Solid Waste Disposal Control Bd., Div. of Solid Waste Management, 852 S.W.2d 893, 1992 Tenn. App. LEXIS 973 (Tenn. Ct. App. 1992).

Administrative rule making does not require that the specific terms of a rule be determined in advance and be finally adopted without modification. It is sufficient if the statutory publication is adequate to inform the public of the subject matter of the rule to be considered and that the public have adequate opportunity to present and support its views as to what rule should be made regarding that subject matter. Tennessee Envtl. Council v. Solid Waste Disposal Control Bd., Div. of Solid Waste Management, 852 S.W.2d 893, 1992 Tenn. App. LEXIS 973 (Tenn. Ct. App. 1992).

Interested parties are not entitled to a new publication in order to validate the consideration of additional factual information nor to an opportunity of rebuttal so long as the finished product is within the bounds of the original publication. Tennessee Envtl. Council v. Solid Waste Disposal Control Bd., Div. of Solid Waste Management, 852 S.W.2d 893, 1992 Tenn. App. LEXIS 973 (Tenn. Ct. App. 1992).

4-5-204. Conduct of hearings.

(a)(1) The agency shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration.

(2) The presiding officer may limit oral presentations if the presiding officer feels that the length of the hearing otherwise would be unduly increased by reason of repetition.

(3) The agency shall afford each interested person opportunity to present facts, views or arguments in writing, whether or not such person had an opportunity to present them orally.

(4) At the beginning of each hearing, if the agency has made a proposal, the agency shall present a summary of the factual information on which its proposal is based, including any information obtained through the use of advisory committees or as a result of informal conferences or consultation.

(b)(1) The person authorized by the agency to conduct the hearing may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines.

(2) The agency shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(c)(1) If the officer or a quorum of the board or commission charged by law with ultimate responsibility for rulemaking is not present at the hearing, a person who appears at the hearing shall be given an opportunity to present

the person's arguments to such officer or quorum of such board or commission prior to adoption of the rule being proposed if, at the hearing, the person makes a request for such opportunity in writing to the person presiding at the hearing.

(2) Such officer, board or commission may in its discretion require such arguments to be presented in writing.

(3) If a record of the hearing has been made, argument shall be limited to the record.

(4) Where oral argument is accorded, such officer, board or commission may impose reasonable limitations on the length and number of appearances in order to conserve time and preclude undue repetition.

(d) The procedures prescribed by this section are supplemental to procedures prescribed by any statute relating to the specific agency or to the rule or class of rules under consideration. However, in any case of conflict between this section and another procedural administrative statute, this section shall control.

(e) Prior to holding the public hearing as required by subsection (a), the agency may solicit comments from the public on a subject matter of possible rulemaking under active consideration within the agency, significant aspects of which remain undeveloped, by causing notice of the hearing to be published in accordance with the requirements of § 4-5-203. At such hearing notice of the time and place of the public hearing required by subsection (a) shall be announced; and the agency shall take other appropriate actions to comply with § 4-5-203 and title 8, chapter 44, part 1. The hearing procedures set forth in this subsection (e) are in addition to, and not a substitution for, the requirements of § 4-5-203. When the agency has determined the specifics of the proposal, it must comply with the normal hearing and notice requirement of rulemaking.

History.

Acts 1975, ch. 370, § 8; T.C.A., §§ 4-532, 4-5-126; Acts 1982, ch. 874, § 12; 1986, ch. 738, § 6; 1991, ch. 346, § 3; 2021, ch. 531, § 6.

Compiler's Notes.

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.

The 2021 amendment substituted "rule being proposed" for "proposed rule" in (c)(1).

Effective Dates.

Acts 2021, ch. 531, § 16. July 1, 2021.

Law Reviews.

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

4-5-205. Consideration of arguments — Reasons given for agency action — Advisory committees.

(a) The agency shall consider fully all written and oral submissions respecting rules being proposed.

(b) Upon adoption of a rule, the agency, if requested to do so by an interested person prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for its action.

(c) An agency is authorized to appoint committees of experts or interested

persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of such committees shall be advisory only. The agency may at its election compensate the members of such advisory committees for their services.

History.
Acts 1974, ch. 725, § 3; 1975, ch. 370, § 7; 1978, ch. 712, § 1; 1978, ch. 938, § 1; T.C.A., §§ 4-509, 4-5-103(c); Acts 1982, ch. 874, § 13; 2021, ch. 531, § 7.

Compiler's Notes.
Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.
The 2021 amendment substituted "rules being proposed" for "proposed rules" in (a).

Effective Dates.
Acts 2021, ch. 531, § 16. July 1, 2021.

NOTES TO DECISIONS

1. Validity of Rule.
A rule of discipline that clearly defines the prohibited act and otherwise complies with this chapter is not invalid because the sanctions for its violation are not specified therein. State Board of Regents of University v. Gray, 561 S.W.2d 140, 1978 Tenn. LEXIS 573 (Tenn. 1978).

4-5-206. Filing of rules.

(a) It is the duty of the secretary of state to file the rules of each agency in a convenient and accessible manner. Each copy of a rule filed shall contain a citation of the authority pursuant to which it was adopted, and if an amendment, it shall clearly identify the original rule by rule number and title.

(b) The secretary of state shall endorse on each copy of a rule or rules filed the time and date of filing and shall maintain a file of such rules for public inspection.

(c) No rule shall be filed under this chapter unless it complies with § 4-5-211.

(d) The secretary of state shall prescribe rules governing the manner and form in which written rules shall be prepared and transmitted by the agencies to the secretary of state for filing. The secretary of state may require the online submission of rules filed pursuant to this part. The secretary of state may refuse to accept any rule that does not conform to such requirements.

History.
Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-104(e)(2), (e)(3), (f); Acts 1982, ch. 874, § 14; 2009, ch. 566, §§ 8, 9; 2016, ch. 576, § 3.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

4-5-207. Effective dates of rules.

No rule shall become effective unless it complies with §§ 4-5-206 and 4-5-211. No rule, unless filed as an emergency rule pursuant § 4-5-208, shall become effective until ninety (90) days after the filing of such rule in the office of the secretary of state.

History.
Acts 1982, ch. 874, § 16; 1986, ch. 738, § 8; 1993, ch. 316, § 1; 2009, ch. 566, § 10.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

4-5-208. Emergency rules.

(a) An agency may, upon stating its reasons in writing for making such findings, proceed without prior notice or hearing to adopt an emergency rule, if the agency finds that:

(1) An immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by this chapter would not adequately protect the public;

(2) The rule only delays the effective date of another rule that is not yet effective;

(3) It is required by the constitution or court order;

(4) It is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures described in this chapter might jeopardize the loss of a federal program or funds; or

(5) The agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.

(b) The emergency rule shall become effective immediately, unless otherwise stated in the rule, upon a copy of the rule and a copy of the written statement of the reasons for the rule being filed with the secretary of state. The emergency rule may be effective for a period of not longer than one hundred eighty (180) days. An agency shall not adopt the same or a substantially similar emergency rule within one (1) calendar year from its first adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred eighty-day period that the emergency would continue or would likely recur during the next nine (9) months. The adoption of the same or substantially similar rule through ordinary rulemaking procedures authorized by this chapter shall not be precluded by this section.

(c) The agency shall take steps to make emergency rules known to persons who will be affected by the rules. The secretary of state shall post the emergency rule filing to the administrative register website within four (4) days of filing. An emergency rule filing shall remain on the administrative register website until the filing expires. The secretary of state shall update relevant rules to reflect the filing and the expiration of emergency rules.

(d) In any action contesting a rule adopted in reliance upon this section, the burden of persuasion shall be upon the agency to demonstrate that the rule meets the criteria established by this section.

(e) An agency's finding of an emergency pursuant to this section shall not be based upon the agency's failure to timely process and file rules through the normal rulemaking process.

History.
Acts 1982, ch. 874, § 17; 1991, ch. 346, § 4; 1993, ch. 316, §§ 4, 5; 2009, ch. 566, § 11; 2014, ch. 782, § 3.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

4-5-209. Reference to public necessity rules deemed references to emergency rules.

Any reference in this code to public necessity rules shall be deemed to be a reference to emergency rules as provided in § 4-5-208. The Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

History.
Acts 1981, ch. 47, § 3; T.C.A., § 4-5-133; Acts 1982, ch. 874, § 18; 1986, ch. 738, § 7; 1993, ch. 316, § 6; 2009, ch. 566, § 12; 2015, ch. 502, § 9.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

4-5-210. Promulgation of rules relating to guides to practice.

(a)(1) All entities listed in chapter 29, part 2 of this title that establish or adopt guides to practice or that regulate professions that establish or adopt guides to practice shall promulgate rules specifying all provisions included in and relating to the guides to practice.

(2) No entity subject to this section shall adopt guides to practice developed or approved by any private organization or association that are not adopted in accordance with this chapter. Any changes to guides to practice made by a private organization or association after the guides to practice are adopted shall be effective only after the changes are also adopted in accordance with this chapter.

(3) This subsection (a) only applies to guides to practice:

(A) Established, adopted, or amended after April 28, 2017; and

(B) That must be complied with in order to maintain a person's license, certification, or registration in order to practice a profession.

(b) The rules promulgated by entities pursuant to subsection (a) shall:

(1) Supersede any existing guides to practice developed or approved by a private organization or association that conflict with or are otherwise not included in such rules; and

(2) Be promulgated in accordance with this chapter.

(c) As used in this section, "guides to practice" includes codes of ethics and other measures that establish service quality standards. "Guides to practice" does not include:

(1) Tests or examinations;

(2) Building codes;

(3) Safety codes; or

(4) Drug standards.

History.
Acts 2017, ch. 215, § 1.

4-5-211. Approval of rules by attorney general and reporter.

No rule shall be filed in the office of the secretary of state until such rule has been filed with the office of the attorney general and reporter. The office of the attorney general and reporter shall review the legality and constitutionality of every rule filed pursuant to this section and shall approve or disapprove of rules based upon the attorney general's determination of the legality of such rules. The attorney general and reporter shall not approve an emergency rule filed pursuant to § 4-5-208 if the emergency rule does not meet the statutory criteria for adoption of the rule contained in this chapter.

History.
Acts 1982, ch. 874, § 20; 2009, ch. 566, § 13; 2021, ch. 291, § 1.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Amendments.
The 2021 amendment rewrote the last sentence, which read: "The attorney general and reporter shall not disapprove an emergency rule filed pursuant to § 4-5-208 solely on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, unless the attorney general and reporter determines and states in writing that the attorney general and reporter could not defend the legality of the rule on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, in any action contesting the legal validity of the rule."

Effective Dates.
Acts 2021, ch. 291, § 2. July 1, 2021.

Law Reviews.
Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

4-5-212. Remand of rule that may constitute potentially unreasonable restraint of trade.

Prior to a rule being filed by a regulatory board, as defined in § 4-4-125(a), with the secretary of state pursuant to § 4-5-207 or § 4-5-208, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, will remand a rule that may constitute a potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

History.
Acts 2017, ch. 230, § 2.

Compiler's Notes.
For the Preamble to the act relative to the doctrine of state antitrust immunity and the decision of the U.S. Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), please refer to Acts 2017, ch. 230.

4-5-213. Report of department's chapters — Certification of report.

(a) For the purposes of this section:

(1) "Chapter" means the grouping of rules in the secretary of state's numbering system that follows the entity control number and division, if any, but is before the individual rule number; and

(2) "Department" means an administrative department of state govern-

ment included in § 4-3-101 or any other agency not administratively attached to an administrative department.

(b) By December 1, 2023, and every eight (8) years thereafter, a department with rules promulgated and published on the secretary of state's website pursuant to § 4-5-220, or with an administratively attached agency with rules promulgated and published on the secretary of state's website pursuant to § 4-5-220, shall submit a report of the department's chapters in effect as of July 1 of the year that the report is due to the chair of the government operations committee of the senate and the chair of the government operations committee of the house of representatives. The report includes:

(1) A brief description of the department's operations that each chapter affects;

(2) For each rule in a chapter, the rule's administrative history, including, but not limited to, the original date the rule was promulgated and the date the rule was last amended;

(3) A determination of whether each rule in the chapter should:

(A) Be amended or repealed;

(B) Be reviewed further; or

(C) Continue in effect without amendment; and

(4) A determination of whether each rule in the chapter adheres to current state and federal law, to court rulings, and to any other standards that affect the rule.

(c) The department shall certify the report submitted under this section. If a department intentionally makes a false statement in the report, then the government operations committee of the senate and the government operations committee of the house of representatives, meeting jointly or separately, may vote to request the general assembly to repeal a rule, or suspend any or all of the department's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

History.
Acts 2021, ch. 328, § 1.

Effective Dates.
Acts 2021, ch. 328, § 2. July 1, 2021.

4-5-214. Withdrawal of rules.

(a) A rule may be withdrawn by the agency proposing the rule at any point prior to the effective date of the rule. The withdrawal shall become effective upon delivery of a written notification of such withdrawal to the office of the secretary of state and shall result in the nullification of all procedures undertaken or performed in order to promulgate the rule. The secretary of state may require the online submission of the notification of withdrawal of rules filed pursuant to this part.

(b) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

History.
Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981,

ch. 140, § 1; T.C.A., § 4-5-104(i); Acts 1982, ch. 874, § 23; 2009, ch. 566, § 21; 2016, ch. 576, § 4.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Law Reviews.

Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

Attorney General Opinions.

Publication of Rule Following Court's Invalidation of Rule Amendments. OAG 11-78, 2011 Tenn. AG LEXIS 79 (11/15/11).

4-5-215. Stay of effective date of rules.

(a) Prior to the effective date of the rule, the agency proposing the rule may stay the running of the ninety-day period required by § 4-5-207 for a period of time not to exceed seventy-five (75) days. The stay shall become effective at such time as the agency files written notice with the secretary of state and shall specify the length of the effectiveness of the stay. The secretary of state may require the online submission of the notice of stay or related filings filed pursuant to this part. Prior to the expiration of the stay, the stay may be withdrawn by the agency. Withdrawal or expiration of the stay shall reactivate the running of the balance of the ninety-day period that remained upon the date the stay was filed.

(b) Prior to the effective date of a rule, the house of representatives or the senate government operations committee may stay the running of the ninety-day period required by § 4-5-207 for a period of time not to exceed ninety (90) days. If the government operations committee of the house of representatives and senate acting jointly determines that subsequent stays are necessary, then the joint committee may issue consecutive stays, each for an additional ninety (90) day period, so long as such stays do not extend beyond the fifth legislative day of the year following the year in which the rule is filed with the office of the secretary of state. A stay is effective when the respective committee files written notice with the secretary of state, and the respective committee shall specify the length of effectiveness of the stay. Prior to the expiration date of the stay, such stay may be withdrawn by the respective committee. Withdrawal or expiration of the stay reactivates the running of the balance of the ninety-day period that remained upon the date the stay was filed.

History.

Acts 1974, ch. 725, § 4; 1975, ch. 370, § 10; 1978, ch. 895, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; Acts 1978, ch. 938, § 2; 1979, ch. 43, §§ 1, 2; 1979, ch. 200, §§ 1, 2; T.C.A., § 4-510; modified; Acts 1980, ch. 550, § 1; 1980, ch. 758, § 1; 1981, ch. 42, §§ 1, 3; 1981, ch. 47, §§ 1, 4, 5; 1981, ch. 49, § 1; 1981, ch. 140, § 1; T.C.A., § 4-5-104(j); Acts 1982, ch. 874, § 24; 1991, ch. 266, § 1; 1993, ch. 316, § 2; 1995, ch. 546, § 2; 2009, ch. 566, § 14; 2015, ch. 502, §§ 2, 3; 2016, ch. 576, § 5; 2021, ch. 532, § 1.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Amendments.

The 2021 amendment in (b), substituted "ninety (90) days" for "seventy-five (75) days" in the first sentence, added the second sentence, substituted "A stay is effective when the respective committee" for "Such stay shall become effective at such time as the committee", inserted "the respective committee" in the third sentence, inserted "respective" preceding "committee" in the fourth sentence and substituted "reactivates" for "shall reactivate" in the last sentence.

Effective Dates.

Acts 2021, ch. 532, § 2. May 25, 2021.

Law Reviews.

Adding It Up: Implications of Tennessee's

New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

4-5-216. Invalidity of improperly adopted rules.

Any agency rule not adopted in compliance with this chapter shall be void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose.

History.
Acts 1982, ch. 874, § 25.

Law Reviews.
Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

Attorney General Opinions.
The pharmacy based immunization program guidelines adopted by the Tennessee board of pharmacy are void as they were not promulgated as rules under the provisions of the Uniform Administrative Procedures Act, OAG 01-091, 2001 Tenn. AG LEXIS 82 (6/4/01).

4-5-217. Rules of practice required.

In addition to other rulemaking requirements imposed by law, each agency shall adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including, where practical, a description of all forms and instructions used by the agency.

History.
Acts 1982, ch. 874, § 27.

Law Reviews.
Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

4-5-218. Public inspection and copying of agency rules, final orders and decisions.

(a) Each agency shall make available for inspection and copying:

(1) Agency rules, final orders and decisions;

(2) Written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;

(3) Opinions of the attorney general and reporter rendered to the agency; and

(4) A description of its current organization stating the general course and method of its operation and the methods whereby the public may obtain information or make submissions or requests.

(b) The agency may charge reasonable compensatory fees for providing any documents specified in this section to requesting persons.

(c) Nothing in this section shall be construed to limit access to public documents under any other provision of law.

(d) The segregable portion of any document or other agency record specified in this section shall be provided to any person requesting such document or record after deletion of the portions that are confidential under any provision of law and payment of reasonable compensatory fees to the agency.

History.
Acts 1982, ch. 874, § 28; 1986, ch. 738, § 10; 1994, ch. 903, § 1; 2009, ch. 566, § 22.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Cross-References.
Confidentiality of public records, § 10-7-504.
Records open to public inspection, exceptions, § 10-7-503.

Law Reviews.
Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

NOTES TO DECISIONS

Analysis

1. Decisions Not Privileged.
2. Discovery.

1. Decisions Not Privileged.
Decisions that must be made available for inspection and copying are not privileged. Bryant v. Delbar Prods., Inc., 18 F. Supp. 2d 799, 1998 U.S. Dist. LEXIS 13536 (M.D. Tenn. 1998).

2. Discovery.
T.C.A. § 4-5-218 does not grant pretrial discovery rights to parties involved in litigation with the agency. Reid v. State, 9 S.W.3d 788, 1999 Tenn. App. LEXIS 272 (Tenn. Ct. App. 1999), rehearing denied, — S.W.3d —, 1999 Tenn. App. LEXIS 441 (Tenn. Ct. App. June 10, 1999).

4-5-219. Model rules of procedure.

(a) The secretary of state, from time to time, may adopt, in accordance with the rulemaking requirements of this chapter, model rules of procedure appropriate for use by as many agencies as possible.

(b) The model rules shall deal with all general functions and duties performed in common by several agencies.

(c) Each agency shall adopt as much of the model rules as is practicable. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking requirements of this chapter.

(d) Any rule or procedure adopted by an agency that differs from the model rules shall be accompanied by a finding stating the reasons why the relevant portions of the model rules were impracticable for such agency.

History.
Acts 1982, ch. 874, § 29; 2016, ch. 576, § 6.

Law Reviews.
Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

4-5-220. Publication of rules on the secretary of state's website — Contents of website.

(a) After a rule is filed, the secretary of state shall, within seven (7) days of its acceptance, add the filed rule to the appropriate location within the portion of the secretary of state's website devoted to this chapter. The secretary of state's website shall contain the following:

(1) The text of all pending rules, notices of rulemaking hearings, withdrawal of rules, stays of effective dates, withdrawal of stays of effective dates, emergency rules, announcements and proclamations. The text shall remain on the website until the filing becomes effective as provided by this chapter. After the effective date of the rule, the filing shall be archived on the

website;

(2) A table listing the citations of all rules filed that have pending effective dates, hearing dates or some other action required by this chapter;

(3) A table listing all emergency rules in effect;

(4) A table of all pending rules and regulations with projected financial impact upon local governments as provided to the secretary of state pursuant to § 4-5-228; and

(5) Any other notices or documents designated by law or by the secretary of state.

(b) The secretary of state shall compile on the secretary of state's website an official compilation of all the effective rules of each agency. Rules compiled and published on the secretary of state's website as of July 1, 2016, shall be deemed the official compilation of the effective rules of each agency, as amended by the secretary of state from time to time to reflect the addition, deletion, or revision of rules in accordance with this part. The secretary of state shall update agency rules on the effective date of any new amendment to existing rules or of any new rules. The secretary of state shall incorporate emergency rules within the appropriate agency's rules within four (4) days of their filing. The secretary of state shall revise the official compilation of rules upon the expiration of an emergency rule.

(c) The secretary of state may, in the secretary of state's discretion, omit from the register or the compilation rules, which, if published, would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed, electronic or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies of the rules may be obtained.

(d) The secretary of state shall make the register website and the official rules and regulation website available through the internet without charge to the user.

History.

Acts 1982, ch. 874, § 30; 1996, ch. 779, §§ 1, 2, 4; 2009, ch. 566, § 15; 2010, ch. 1070, § 1; 2014, ch. 782, §§ 4, 5; 2016, ch. 576, § 7.

Compiler's Notes.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

For the Preamble to the act regarding no law increasing expenditure requirements of cities or counties without state cost sharing, please refer to Acts 2010, ch. 1070.

Law Reviews.

Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

Attorney General Opinions.

Publication of Rule Following Court's Invalidation of Rule Amendments. OAG 11-78, 2011 Tenn. AG LEXIS 79 (11/15/11).

4-5-221. Powers of secretary of state regarding publication — Certification of rules — Website and its contents prima facie evidence of regulatory law — Delegation of duties and powers.

(a)(1) With respect to the publication of the administrative code to be cited as the rules and regulations of the state of Tennessee, and with regard to the publication of the monthly administrative register to be cited as the Tennessee administrative register, the secretary of state shall have the powers set out in subdivision (a)(2); provided, that the requirements of subdivision (a)(3) are met.

(2) In preparing the administrative code and administrative register the secretary of state shall not alter the sense, meaning or effect of any rule promulgated by an agency, but shall copy the exact language of the text of a rule filed with the secretary of state's office, except that the secretary of state is authorized to rearrange, regroup, and renumber the divisions, chapters, rules, and parts of rules for publication in the administrative code and monthly register and to change reference numbers to agree with any renumbered chapter or rule, to change the wording of and prepare new rule headings and symbols; to substitute the proper rule or chapter reference where the terms "these rules" or "this regulation" or similar expressions are used in the rules; to correct manifest misspelling and typographical errors and to change capitalization and spelling for the purpose of uniformity; to change references to governmental agencies, when part or all of the powers, rights or duties of such agencies have, by act of the general assembly or of the governor, been transferred to other agencies; and to omit preambles, captions and statements declaring authority and rulemaking intent. Where the application or effect of a rule, by its terms, depends on the time when the rule took effect, the secretary of state may substitute the actual effective date for the various forms of expression that mean that date, such as "when this rule (or chapter) takes effect" or "after (or before) the effective date of this rule (or chapter)." No such change shall be deemed an alteration or departure from the rule as filed.

(3) Every agency filing rules for publication in the administrative code and administrative register shall assure the accuracy of its submission and that the submission meets the requirements of the rules and regulations promulgated by the secretary of state pursuant to this chapter, when they are filed with the secretary of state.

(b) The secretary of state shall prepare a written certificate of approval for each website that certifies approval of the website and its contents and that the text of each rule was compared with the original filing with the secretary of state, and that, with the exception of changes in form permitted by subsection (a), the rules are accurately and correctly copied.

(c) The website of the administrative register and administrative code and its contents that contain the secretary of state's certificate of approval shall constitute prima facie evidence of the regulatory law of the state of Tennessee and be received, recognized, referred to and used in all courts, agencies, departments, offices of and proceedings in Tennessee as the official compilation of rules and regulations of Tennessee.

(d) The secretary of state is authorized to delegate any or all duties and powers set out in this section and chapter to the director of the publications division or any other members of the secretary of state's staff.

History.
Acts 1975, ch. 370, § 11; T.C.A., §§ 4-533, 4-5-127; Acts 1982, ch. 874, § 31; 1996, ch. 779, § 3; 2009, ch. 566, § 16.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Law Reviews.
Judicial Notice in Tennessee (Robert Banks, Jr. and Elizabeth T. Collins), 21 Mem. St. U.L. Rev. 431 (1991).

4-5-222. Record of voting on policy or rule adoption.

(a)(1) Notwithstanding any law to the contrary, in addition to other rulemaking requirements imposed by law, each agency shall maintain the following written records on each rule adopted by such agency:

(A) The rule, in writing, signed by the person proposing such rule;

(B) A roll call vote on adoption by "aye" or "no" of each person voting; and

(C) The responses of the agency to the comments submitted at any public hearing on the rule being proposed. Each comment shall be addressed; provided, however, that similar comments may be grouped together and addressed in one (1) response. The response to specific comments shall include the reasons for agency adoption or rejection of any specific changes suggested by the comments. A transcript of the rulemaking hearing shall not suffice as the response to comments required by this section.

(2) The record required by this section need not be published, but a copy shall be filed with the secretary of state, and the agency shall certify its compliance with this section to the attorney general and reporter prior to the approval of the rule. Failure to file such record at the time the rule is filed with the secretary of state will make the rule void and of no effect. Such record shall be available to the public during normal office hours of the agency at its principal office or the office of the secretary of state.

(b) Whenever policies that affect the rules and procedures of any agency are decided by vote of the agency, a record on such policies shall be maintained in accordance with this section and made available to the public in the same manner as is required for a rule.

History.
Acts 1977, ch. 187, § 1; T.C.A., §§ 4-536, 4-5-130; Acts 1982, ch. 874, § 32; 1991, ch. 346, § 5; 1993, ch. 458, § 1; 2021, ch. 531, § 8.

Compiler's Notes.
Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.
The 2021 amendment substituted "rule being proposed" for "proposed rule" in (a)(1)(C).

Effective Dates.
Acts 2021, ch. 531, § 16. July 1, 2021.

Law Reviews.
Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

4-5-223. Declaratory orders.

(a) Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

(b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

(c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.

(d) Each agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition.

History.
Acts 1982, ch. 874, § 34.

Attorney General Opinions.
The Uniform Administrative Procedures Act does not apply to the Knoxville-Knox county community action committee, OAG 05-148, 2005 Tenn. AG LEXIS 150 (9/29/05).

NOTES TO DECISIONS

Analysis

1. Constitutional Questions.
2. Jurisdiction.
3. Criminal Sentencing.

1. Constitutional Questions.

An administrative body in a contested case proceeding may resolve questions of the unconstitutional application of a statute to the specific circumstances of the case or the constitutionality of a rule that the agency has adopted. Richardson v. Board of Dentistry, 913 S.W.2d 446, 1995 Tenn. LEXIS 788 (Tenn. 1995).

The chancery court, on judicial review or in a declaratory judgment action, may consider constitutional issues arising as the result of a contested case proceeding even though the issues were not raised in the agency or, if raised, were not addressed. Richardson v. Board of Dentistry, 913 S.W.2d 446, 1995 Tenn. LEXIS 788 (Tenn. 1995).

Inmates were not entitled to bring a declaratory judgment proceeding to declare a statute unconstitutional where they had not sought a declaratory order from the agency that exercised primary jurisdiction over the statute. Davis v. Sundquist, 947 S.W.2d 155, 1997 Tenn. App. LEXIS 130 (Tenn. Ct. App. 1997).

2. Jurisdiction.

Tennessee claims commission lacked subject matter jurisdiction to rule upon a claim by hospitals for additional Medicaid reimbursement where the claim challenged the validity of a Tennessee department of health regulation promulgated while it was the sole state agency in charge of administering the Medicaid program. The health department was the agency with primary jurisdiction over the case pursuant to T.C.A. § 4-5-223(a) of the Uniform Administrative Procedures Act. Baptist Hosp. v. Tennessee Dep't of Health, 982 S.W.2d 339, 1998 Tenn. LEXIS 718 (Tenn. 1998).

Inmate was not entitled to a declaratory judgment stating that because of his medical condition he should be drug tested by patch rather than urine sample when the Declaratory Judgment Act, T.C.A. § 29-14-101 et seq., did not permit the filing of a suit against the state to construe statutes; moreover, the chancery court lacked the jurisdiction to hear a declaratory judgment action against the department of correction, as T.C.A. §§ 4-5-223 and 4-5-225 did not apply to the internal management of state government if the policy did not affect the private rights, privileges, or procedures avail-

able to the public. Fuller v. Campbell, 109 S.W.3d 737, 2003 Tenn. App. LEXIS 36 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 533 (Tenn. May 27, 2003), appeal denied, —S.W.3d —, 2003 Tenn. LEXIS 564 (Tenn. 2003).

Trial court properly dismissed an inmate's petition under T.C.A. §§ 27-8-101 and 27-9-101 for common law writ of certiorari against the Tennessee Department of Correction's (TDOC) and TDOC officials because the inmate failed to seek a declaratory order from TDOC as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-225(b); therefore, the trial court lacked subject matter jurisdiction of the claims against TDOC and TDOC officials. Stewart v. Schofield, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

Supreme Court of Tennessee holds that T.C.A. § 69-3-105(i) prevents using T.C.A. §§ 4-5-223 and 4-5-225 to seek premature administrative or judicial review of the Commissioner's interpretation and application of the Antidegradation Rule in the context of issuing a draft permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Petition for rehearing filed by trustees was denied because the water discharge permit appeals authorized by T.C.A. § 69-3-105(i) displaced the petitions for declaratory orders under T.C.A. § 4-5-223, which they sought, before the Tennessee Water Quality Control Board. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Supreme Court of Tennessee holds that T.C.A. § 69-3-105(i) prevents parties from using the procedures in T.C.A. §§ 4-5-223 and 4-5-225 to seek administrative or judicial review of the Commissioner's interpretation and application of the Antidegradation Rule in the context of granting or denying a final discharge permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Purpose of enacting T.C.A. § 69-3-105(i) is to simplify the administrative and judicial review of the Tennessee Water Quality Control Board Commissioner's permitting decisions and to establish a single, straightforward process by which any aggrieved person would be able to obtain both administrative and, if necessary, judicial review of a decision by the Commissioner regarding a discharge permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

3. Criminal Sentencing.

Where an agency is petitioned to issue a declaratory order pursuant to T.C.A. § 4-5-223 and the agency declines to convene a contested case hearing and issue the declaratory order, the petitioner is not subject to the 60-day statute of limitations established by T.C.A. § 4-5-322(b)(1); rather, a complaint for declaratory judgment under T.C.A. § 4-5-225 is governed by Tennessee's general ten-year statute of limitations, codified at T.C.A. § 28-3-110(3) (now § 28-3-110(a)(3)). Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

Prisoner's declaratory judgment action was not time-barred under T.C.A. § 4-5-223(a) in that it was filed after sixty days from the date that the department of corrections in a letter stated that it denied the prisoner's application for a declaratory order because the letter did not constitute a final order under T.C.A. § 4-5-322(b)(1) and T.C.A. § 4-5-314(c); rather, the provisions of T.C.A. § 4-5-225 applied, and because there was no express limitation period under the provisions, the general ten-year limitations period of T.C.A. § 28-3-110 applied. Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

Because an inmate's challenge to the constitutionality of T.C.A. § 40-35-501(i) was an "as applied" challenge, proceeding through the Uniform Administrative Procedure Act was proper. Davis v. Tenn. Dep't of Corr., — S.W.3d —, 2018 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 30, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 13 (Tenn. Jan. 18, 2019).

4-5-224. Declaratory order request — Notices.

(a) Whenever an agency is petitioned for a declaratory order, that agency shall:

(1) Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register website and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register website; and

(2) Take such other steps as it deems necessary to convey effective notice to other agencies and professional associations that are likely to have an interest in the declaratory order proceedings.

(b) Such notices shall include specific information relating to the declaratory order request, including, but not limited to:

(1) Name of petitioner and an explanation of whom such person or entity purports to represent;

(2) A summary of the relief requested, including the specific nature of the requested order, and the conclusion or conclusions the petitioner requests that the agency reach following the declaratory proceeding; and

(3) A detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule.

(c) Notwithstanding § 4-5-223(a)-(c), except in the case of an emergency proceeding that meets the conditions of § 4-5-208, no declaratory order proceeding that calls for a title 63 agency to rule on the meaning of any provision of a licensee's professional licensing act may be set until at least forty-five (45) days after the notice required by this section has been filed with the secretary of state.

History.

Acts 1997, ch. 162, § 1; 2009, ch. 566, §§ 17, 18.

Compiler's Notes.

Former § 4-5-224, concerning declaratory judgments, was transferred to § 4-5-225 pursuant to Acts 1997, ch. 162, § 1.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

NOTES TO DECISIONS

Analysis

1. Constitutional Questions.
2. Construction.
3. Mootness.
4. Jurisdiction.

1. Constitutional Questions.

Inmates were not entitled to bring a declaratory judgment proceeding to declare a statute unconstitutional where they had not sought a declaratory order from the agency that exercised primary jurisdiction over the statute. Davis v. Sundquist, 947 S.W.2d 155, 1997 Tenn. App. LEXIS 130 (Tenn. Ct. App. 1997).

2. Construction.

Notice requirement of T.C.A. § 4-5-224 pertains to the scheduling of a hearing, not the filing of a petition, and only requires that the agency petitioned for declaratory order provide notice of the hearing, not the filing of a petition; the petition was dismissed prior to the scheduling of a hearing and the agency was under no duty to send out notice. Tenn. Envtl. Council v. Tenn. Water Quality Control Bd., 254 S.W.3d 396, 2007 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 3, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 174 (Tenn. Mar. 10, 2008).

3. Mootness.

Claims of a state employee challenging her termination and seeking back pay, expungement of employment records, and attorney's fees were not moot because she had already been terminated, since, even if she could not convince a court to set aside her termination or grant monetary relief, she might be entitled to judicial relief with regard to other rights under former T.C.A. § 8-30-312 (now T.C.A. § 8-30-318). Cashion v. Robertson, 955 S.W.2d 60, 1997 Tenn. App. LEXIS 198 (Tenn. Ct. App. 1997), rehearing denied, — S.W.2d —, 1997 Tenn. App. LEXIS 241 (Tenn. Ct. App. Apr. 11, 1997).

4. Jurisdiction.

Trial court had subject matter jurisdiction over the petition of a probationary employee which demonstrated that the department of mental health and mental retardation (now the department of mental health and the department of intellectual and developmental disabilities), the former civil service commission, and the department of personnel (now department of human resources) had declined to render a declaratory order concerning her rights under former T.C.A. § 8-30-212. Cashion v. Robertson, 955 S.W.2d 60, 1997 Tenn. App. LEXIS 198 (Tenn. Ct. App. 1997), rehearing denied, — S.W.2d —, 1997 Tenn. App. LEXIS 241 (Tenn. Ct. App. Apr. 11, 1997).

4-5-225. Declaratory judgments.

(a) The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment in the chancery court of Davidson County, unless otherwise specifically provided by statute, if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant. The agency shall be made a party to the suit.

(b) A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

(c) In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with the rulemaking procedures provided for in this chapter or otherwise violates state or federal law.

History.

Acts 1982, ch. 874, § 35; 1997, ch. 162, § 1; T.C.A., § 4-5-224.

Compiler's Notes.

Former § 4-5-225, concerning expiration of rules, was transferred to § 4-5-226 pursuant to Acts 1997, ch. 162, § 1.

NOTES TO DECISIONS

Analysis

1. Constitutional Questions.
2. Applicability.
3. Jurisdiction.
4. Petition to Agency.
5. Statutes of Limitation.

1. Constitutional Questions.

The chancery court, on judicial review or in a declaratory judgment action, may consider constitutional issues arising as the result of a contested case proceeding even though the issues were not raised in the agency or, if raised, were not addressed. Richardson v. Board of Dentistry, 913 S.W.2d 446, 1995 Tenn. LEXIS 788 (Tenn. 1995).

Company's prayer for relief in complaint filed contained a mixture of constitutional challenges, and to a certain extent both facial validity and statutory application were at issue; questions of whether application of a statute violated constitutional principles should be submitted to the agency through a petition for a declaratory order before any action was brought in chancery court under T.C.A. § 4-5-225(b), and questions of constitutional validity need not be. Colonial Pipeline Co. v. Morgan, 263 S.W.3d 827, 2008 Tenn. LEXIS 589 (Tenn. Sept. 9, 2008).

Because an inmate's challenge to the constitutionality of T.C.A. § 40-35-501(i) was an "as applied" challenge, proceeding through the Uniform Administrative Procedure Act was proper. Davis v. Tenn. Dep't of Corr., — S.W.3d —, 2018 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 30, 2018), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 13 (Tenn. Jan. 18, 2019).

2. Applicability.

The department of correction's policies affecting the custody and control of inmates need not be promulgated as rules under the Uniform Administrative Procedures Act. Ogburn v. Tennessee Dep't of Correction, 983 S.W.2d 677, 1998 Tenn. App. LEXIS 26 (Tenn. Ct. App. 1998).

Inmate was not entitled to a declaratory judgment stating that because of his medical condition he should be drug tested by patch rather than urine sample when the Declaratory Judgment Act, T.C.A. § 29-14-101 et seq., did not permit the filing of a suit against the state to construe statutes; moreover, the chancery court lacked the jurisdiction to hear a declaratory judgment action against the department of correction, as T.C.A. §§ 4-5-223 and 4-5-225 did not apply to the internal management of state government if the policy did not affect the private rights, privileges, or procedures available to the public. Fuller v. Campbell, 109 S.W.3d 737, 2003 Tenn. App. LEXIS 36 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —,

2003 Tenn. LEXIS 533 (Tenn. May 27, 2003), appeal denied, —S.W.3d —, 2003 Tenn. LEXIS 564 (Tenn. 2003).

Petition for rehearing filed by trustees was denied because the water discharge permit appeals authorized by T.C.A. § 69-3-105(i) displaced the petitions for declaratory orders under T.C.A. § 4-5-223, which they sought, before the Tennessee Water Quality Control Board. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Supreme Court of Tennessee holds that T.C.A. § 69-3-105(i) prevents using T.C.A. §§ 4-5-223 and 4-5-225 to seek premature administrative or judicial review of the Commissioner's interpretation and application of the Antidegradation Rule in the context of issuing a draft permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Purpose of enacting T.C.A. § 69-3-105(i) is to simplify the administrative and judicial review of the Tennessee Water Quality Control Board Commissioner's permitting decisions and to establish a single, straightforward process by which any aggrieved person would be able to obtain both administrative and, if necessary, judicial review of a decision by the Commissioner regarding a discharge permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

Supreme Court of Tennessee holds that T.C.A. § 69-3-105(i) prevents parties from using the procedures in T.C.A. §§ 4-5-223 and 4-5-225 to seek administrative or judicial review of the Commissioner's interpretation and application of the Antidegradation Rule in the context of granting or denying a final discharge permit. Pickard v. Tenn. Water Quality Control Bd., 424 S.W.3d 511, 2014 Tenn. LEXIS 1 (Tenn. Jan. 6, 2014).

3. Jurisdiction.

Whatever jurisiction the chancery court of Davidson County may have to issue a declaratory judgment regarding the constitutionality of a statute pursuant to this section, that authority should not be exercised regarding a statute dealing with state tax revenue if such exercise of jurisdiction would be in conflict with, and undermine, the exclusive jurisdiction for determining liability for taxes that is bestowed by T.C.A § 67-1-1804. L.L. Bean, Inc. v. Bracey, 817 S.W.2d 292, 1991 Tenn. LEXIS 346 (Tenn. 1991).

The district public defenders conference is not an agency subject to the provisions of the Uniform Administrative Procedures Act (UAPA) because it is not required or authorized to make rules and determine contested cases within the meaning of the UAPA and the court has no subject matter jurisdiction to hear a declaratory judgment action brought under the UAPA challenging the salary of an assistant district public defender. Moody v. State Dist. Pub. Defenders Conf., 980 S.W.2d 385, 1998 Tenn. App. LEXIS 222 (Tenn. Ct. App. 1998).

Trial court properly dismissed an inmate's petition under T.C.A. §§ 27-8-101 and 27-9-101 for common law writ of certiorari against the Tennessee Department of Correction's (TDOC) and TDOC officials because the inmate failed to seek a declaratory order from TDOC as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-225(b); therefore, the trial court lacked subject matter jurisdiction of the claims against TDOC and TDOC officials. Stewart v. Schofield, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

Trial court was not deprived of jurisdiction to resolve a payment dispute between a hospital and a for-profit managed care organization (MCO), when the MCO refused to pay the hospital's standard charges for emergency services and follow-up care, because the hospital, which was not part of MCO's provider network under the TennCare regulations and, therefore, was non-contract provider, was not challenging applicability or validity of TennCare regulations. Chattanooga-Hamilton County Hosp. Auth. v. United Healthcare Plan of the River Valley, Inc., — S.W.3d —, 2014 Tenn. App. LEXIS 332 (Tenn. Ct. App. June 6, 2014), rev'd, Chattanooga-Hamilton Cnty. Hosp. Auth. v. UnitedHealthcare Plan of the River Valley, Inc., 475 S.W.3d 746, 2015 Tenn. LEXIS 913 (Tenn. Nov. 5, 2015).

Appellate court erred in dismissing a hospital's claim for monies due for emergency services provided to the enrollees of a managed care organization (MCO) because the parties' claims would necessarily require the trial court to render a declaratory judgment concerning the validity or applicability of the 74% and 57% Medicaid rules, a request for declaratory judgment regarding the applicability or validity of the regulations was implicit in the hospital's claims and the MCO's counterclaim, and the trial court lacked subject matter jurisdiction to hear the case where the hospital failed to exhaust its administrative remedies. Chattanooga-Hamilton Cnty. Hosp. Auth. v. UnitedHealthcare Plan of the River Valley, Inc., 475 S.W.3d 746, 2015 Tenn. LEXIS 913 (Tenn. Nov. 5, 2015).

4. Petition to Agency.

The plain language of T.C.A. § 4-5-225 requires a petitioner to request a declaratory order from the agency prior to filing a petition for declaratory judgment and, absent evidence that the petitioner ever filed such a request, the chancery court lacks subject matter jurisdiction over a petition for a declaratory order. Watson v. Tennessee Dep't of Correction, 970 S.W.2d 494, 1998 Tenn. App. LEXIS 13 (Tenn. Ct. App. 1998).

Inmate may seek judicial review of the inmate's sentence pursuant to the Uniform Administrative Procedures Act, but the inmate must first seek a declaratory order regarding the sentence calculation from the department of correction. Bonner v. State Dep't of Corr., 84 S.W.3d 576, 2001 Tenn. App. LEXIS 608 (Tenn. Ct. App. 2001).

5. Statutes of Limitation.

Where an agency is petitioned to issue a declaratory order pursuant to T.C.A. § 4-5-223 and the agency declines to convene a contested case hearing and issue the declaratory order, the petitioner is not subject to the sixty-day statute of limitations established by T.C.A. § 4-5-322(b)(1); rather, a complaint for declaratory judgment under T.C.A. § 4-5-225 is governed by Tennessee's general ten-year statute of limitations, codified at T.C.A. § 28-3-110(3) (now § 28-3-110(a)(3)). Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

Prisoner's declaratory judgment action was not time-barred under T.C.A. § 4-5-223(a) in that it was filed after sixty days from the date that the department of corrections in a letter stated that it denied the prisoner's application for a declaratory order because the letter did not constitute a final order under T.C.A. § 4-5-322(b)(1) and T.C.A. § 4-5-314(c); rather, the provisions of T.C.A. § 4-5-225 applied, and because there was no express limitation period under the provisions, the general ten-year limitations period of T.C.A. § 28-3-110 applied. Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

4-5-226. Expiration of rules — Review by general assembly.

(a) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or indefinitely, any permanent rule filed in the office of the secretary of state shall expire on June 30 of the year following the year of its filing.

(b)(1) Notwithstanding any other law to the contrary, unless legislation is enacted to continue a rule to a date certain or to a date indefinitely beyond the date upon which an agency terminates, each permanent rule that does not expire under subsection (a), shall expire on the day provided in chapter 29, part 2 of this title for termination of the agency that promulgated such rule; provided, that if such agency continues in existence pursuant to § 4-29-112, such agency rule shall expire upon completion of such wind-up period.

(2) All rules and regulations issued or promulgated by any department or agency of state government whose functions, duties, or responsibilities have been transferred to another department or agency shall remain in full force and effect, and shall thereafter be administered and enforced by the agency or department assuming responsibility for those functions, duties, or responsibilities as rules of that agency or department, and all proposed rules or rulemaking hearing rules pending with the attorney general and reporter or secretary of state, unless withdrawn, shall continue that status as proposed rules or rulemaking hearing rules until becoming effective as rules of the agency assuming the functions, duties, or responsibilities. The agency or department assuming responsibility for such functions, duties, or responsibilities shall have the authority to promulgate new rules and regulations pursuant to this chapter to effectuate its duties and responsibilities. To this end, the department or agency shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions transferred.

(c) Rules promulgated pursuant to this chapter shall be reviewed by the government operations committees of the senate and the house of representa-

tives meeting jointly or separately, or, alternatively, at the discretion of the chair of either of such committees, by a subcommittee of the government operations committees. Members of the government operations committees of the senate and the house of representatives shall serve as members of such committees until their successors are duly appointed; provided, that such members remain members of the general assembly. Any member of either government operations committee who ceases to be a member of the general assembly shall cease to be a member of the government operations committee on the same date such member's membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of either government operations committee shall cease to be members of the general assembly, the speaker of the senate or the speaker of the house of representatives, as the case may be, may designate an appropriate number of members to serve interim appointments until the government operations committee is reconstituted. The house of representatives and senate government operations committees shall strive to hear rules within ninety (90) days of such rules being filed in the office of the secretary of state.

(d)(1) In conducting the review required by subsection (c), the committees or subcommittees shall hold at least one (1) public hearing to receive testimony from the public and from the administrative head of the agency. At such hearing, the agency shall have the burden of demonstrating, by convincing evidence, that consideration of the factors enumerated in subsection (e), in their totality, justifies the continued existence of an agency rule. Notice of the time and place of the public hearing shall be on the general assembly website prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall conduct hearings on newly filed rules, other than emergency rules, during the ninety-day period immediately following the filing of the original of such rule in the office of the secretary of state.

(2) Whether an agency has met its burden of persuasion for the continued existence of a rule is solely within the discretion of the general assembly. Nothing in subdivision (d)(1) or subsection (e) creates a cause of action for any person to seek judicial review of whether the demonstration that an agency offered to justify the continued existence of a rule met the requirements of the standard prescribed in subdivision (d)(1).

(e) As part of the review of agency rules, the agency has the burden of demonstrating, by convincing evidence, that consideration of the factors enumerated in this subsection (e) justify the continued existence of an agency rule. Such factors include:

(1) Whether the agency is acting within its authority to adopt the rule;

(2) Whether the rule, considered in its entirety, will be easily understood by persons directly affected by the rule;

(3) Whether the rule is consistent, and not in conflict with or contradictory to existing law;

(4) Whether the rule is necessary to secure the health, safety, or welfare of the public;

(5) Whether the rule is necessary and essential for the agency to serve persons affected by the rule;

(6) Whether the rule is arbitrary or capricious;

(7) Whether the rule adversely impacts a person's constitutional rights;

(8) Whether the rule unnecessarily adversely impacts business or individuals;

(9) Whether the rule will result in economic efficiency for persons served by the agency and persons affected by the rule; and

(10) Whether the rule exceeds the mandatory minimum requirements of any relevant federal law or rule.

(f) As used in subsection (e):

(1) "Arbitrary or capricious" means a willful or unreasonable agency action without consideration of or in disregard of facts or law; and

(2) "Authority" means provisions of law that permit or obligate the agency to adopt, amend, or repeal a rule.

(g) Nothing contained in this chapter shall be construed to prohibit the general assembly by legislative enactment from directly or indirectly repealing or amending any rule.

(h) The committees or subcommittees have the authority to hold hearings, subpoena records, documents and persons, and to exercise all powers otherwise vested upon committees of the general assembly by title 3, chapter 3, and by the rules of the appropriate house.

(i)(1) All agencies, upon filing a rule in the office of the secretary of state, shall also submit the following information:

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

(H) Office address, e-mail address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

(I) Any additional information relevant to the rule being proposed for continuation that the committee requests.

(2)(A) All amendments to existing executive agency rules to be reviewed by the committees or subcommittees pursuant to this part shall be filed with the secretary of state. One (1) copy of the amendments shall be filed in redline form for review by the committees or subcommittees.

(B) As used in subdivision (i)(2)(A), "redline form" means to denote all amendments to an existing rule by placing a line through all language to be deleted and by including all language to be added in brackets or underlined or by another clearly recognizable method that indicates the changes made to the rule.

(3) Failure to comply with this subsection (i) may be considered as evidence of the failure by an agency to meet its burden of proof required by subsection (d).

(4) The secretary of state shall refuse to accept the filing of any rule that fails to comply with this subsection (i).

(j)(1) The committee may express its disapproval of a rule that fails, in its judgment, to satisfy any or all of the factors enumerated in subsection (e), by voting to allow such rule to expire upon its established expiration date or by voting to request the agency to repeal, amend or withdraw this rule before such established expiration date. Notice of the committee's disapproval of a rule whether by vote to allow the rule to expire or by vote to request the agency to repeal, amend or withdraw a rule shall be posted, by the secretary of state, to the administrative register on the secretary of state's website as soon as possible after the committee meeting in which such action was taken.

(2) In the event an agency fails to comply with the committee's request to repeal, amend, or withdraw a rule within a reasonable time and before the established expiration date, the committee may vote to request the general assembly to repeal the rule, or to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

(k) In addition to the grounds stated in subsection (j) it shall also be grounds for the government operations committee to recommend to the general assembly to terminate a rule promulgated under authority of any provision of title 68, chapters 201 – 221, or title 69, chapter 3, that imposes environmental requirements or restrictions on municipalities or counties that are more stringent than federal statutes or rules on the same subject, and that result in increased expenditure requirements on municipalities or counties beyond those required to meet the federal requirements, unless the general assembly has appropriated funds to the affected local government or governments to cover the increased expenditures, in addition to those they receive pursuant to other laws; provided, that a timely comment was addressed to the promulgating authority pursuant to § 4-5-204, raising this issue and specifying the level of increased expenditure mandated by the rule.

(*l*) If, pursuant to this section, the general assembly terminates a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

(m) If, pursuant to this chapter, an agency withdraws a rule amending a previously existing rule, then such previously existing rule shall continue in effect until it is later amended, repealed or superseded by law.

History.

Acts 1982, ch. 874, § 67; 1983, ch. 479, §§ 2-5; 1984, ch. 707, § 1; 1984, ch. 969, §§ 3, 4; 1985, ch. 440, § 3; 1986, ch. 575, §§ 3, 4; 1986, ch. 738, §§ 8, 9; 1988, ch. 700, § 3; 1990, ch. 838, § 1; 1991, ch. 206, § 1; 1992, ch. 703, § 1; 1993, ch. 316, § 3; 1994, ch. 878, § 1; 1995, ch. 546, §§ 1, 3; 1996, ch. 844, § 1; 1997, ch. 162, § 1; T.C.A., § 4-5-225; Acts 1999, ch. 381, § 1; 2008, ch. 741, § 1; 2009, ch. 566, § 19; 2015, ch. 502, §§ 4-8; 2016, ch. 859, §§ 2-6; 2021, ch. 531, §§ 9, 10.

Compiler's Notes.

Acts 1983, ch. 261 provided that rules 0000-0379, due to expire on July 1, 1983, under the provisions of former (b)(1), would remain in effect, with certain specified exceptions.

Acts 1984, ch. 969 provided that rules 0380-1199, due to expire on July 1, 1984, under the provisions of former (b)(2), would remain in effect, with certain specified exceptions.

Acts 1985, ch. 440, § 2, provided that rules 1200-1319, due to expire on July 1, 1985, under the provisions of former (b)(3), would remain in effect, with certain specified exceptions.

Acts 1986, ch. 575, § 2, provided that rules 1320 to the end, due to expire on July 1, 1986, under the provisions of former (b)(4), would remain in effect, with certain specified exceptions.

Acts 1987, ch. 413, § 1, provided that permanent agency rules filed in calendar year 1986, in effect on May 17, 1987 and due to expire June 30, 1987, shall not expire on June 30, 1987, but shall remain in effect until amended, repealed, or superseded, with certain specified exceptions. Section 2 of that act provided that permanent agency rules filed prior to July 1, 1982, in effect on May 17, 1987 and due to expire July 1, 1987, shall not expire July 1, 1987, but shall remain in effect until amended, repealed or superseded.

Acts 1988, ch. 700, § 1(a), provided that permanent agency rules filed in calendar year 1987, in effect on April 8, 1988, and due to expire on June 30, 1988, shall not expire on June 30, 1988, but shall remain in effect until repealed, amended or superseded. Section 2(a) of that chapter provided that permanent agency rules filed prior to July 1, 1982, that are in effect on April 8, 1988, and due to expire on July 1, 1988, shall not expire on July 1, 1988, but shall remain in effect until repealed, amended or superseded. Chapter 700, §§ 1(b) and 2(b) provided that the provisions in 1(a) and 2(a), respectively, shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a), if such rule conflicts with any enactment other than this section.

Acts 1989, ch. 502, provided that with certain exceptions, permanent agency rules cited in calendar year 1988, scheduled for termination on June 30, 1989, shall not expire on June 30, 1988, but shall continue in effect until repealed, amended or superseded, and that permanent agency rules in effect on June 2, 1989, scheduled for expiration on July 1, 1989, shall not expire on July 1, 1989, but shall remain in force until repealed, amended or superseded.

Acts 1990, ch. 838, § 1, provided that permanent agency rules filed in calendar year 1989, in effect on April 10, 1990, and due to expire on June 30, 1990, shall not expire on June 30, 1990, but shall remain in effect until repealed, amended or superseded.

Acts 1991, ch. 398, § 1(a) provided that all permanent agency rules duly filed in the office of the secretary of state between January 1, 1990 and December 31, 1990, that are in effect on May 22, 1991, and that are scheduled for expiration by the provisions of this section, on June 30, 1991, shall not expire on June 30, 1991, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law. Chapter 398, § 1(b) provided that the provisions in § (1)(a) shall not be construed to justify the continued effectiveness of any rule included within the provisions of § (1)(a), if such rule conflicts with the provisions of any enactment other than this section.

Acts 1992, ch. 852, § 1 provided that, with certain exceptions, permanent agency rules filed in calendar year 1991, and due to expire on June 30, 1992, shall not expire on June 30, 1992, but shall remain in effect until repealed, amended or superseded.

Acts 1993, ch. 467, § 1 provided that, with certain exceptions, permanent agency rules filed in calendar year 1992, and due to expire on June 30, 1993, shall not expire on June 30, 1993, but shall remain in effect until repealed, amended or superseded.

Acts 1994, ch. 878, § 2 provided that subsection (*l*) shall only apply to regulations for which notice is published in the Tennessee Administrative Register after July 1, 1994.

Acts 1994, ch. 957, § 1 provided that, with certain exceptions, permanent agency rules filed in calendar year 1993, and due to expire on June 30, 1994, shall not expire on June 30, 1994, but shall remain in effect until repealed, amended or superseded.

Acts 1995, ch. 251, § 1 deleted Acts 1994, ch. 957, § 6, which amended Rule 0250-2-3-.01(14)

of the Official Compilation of Rules and Regulations of the State of Tennessee — State Board of Education.

Acts 1995, ch. 426, § 1 provided that, with certain exceptions, permanent agency rules filed in calendar year 1994, and due to expire on June 30, 1995, shall not expire on June 30, 1995, but shall remain in effect until repealed, amended or superseded.

Acts 1996, ch. 1051, § 1 provided that, with certain exceptions, permanent agency rules filed in calendar year 1995, and due to expire on June 30, 1996, shall not expire on June 30, 1996, but shall remain in effect until repealed, amended or superseded.

Acts 1997, ch. 433, § 1 provided that, with the following exceptions, permanent agency rules filed in calendar year 1996, and due to expire on June 30, 1997, shall not expire on June 30, 1997, but shall remain in effect until repealed, amended or superseded: Rule 0480-1-.06 (Tennessee Board of Dispensing Opticians - Fees); Rule 0260-2.06 (Board of Chiropractic Examiners - Fees); Rule 0260-3-.06 (Board of Chiropractic Examiners - Fees); Rule 1000-1-.12 (Board of Nursing - Fees); Rule 1050-2-.02 (Board of Osteopathic Examination - Schedule of Fees); Rule 0800-2.02 (Board of Medical Examiners - Fees); and Rule 0530-2-1-.03 (Registry of Election Finance - Bookkeeping Procedures).

Acts 1998, ch. 1056, § 1 provided that, with the following exceptions, permanent agency rules filed in calendar year 1997, that are in effect on May 16, 1998, and due to expire on June 30, 1998, shall not expire on June 30, 1998, but shall remain in effect until repealed, amended or superseded: Rule 0530-1-2-.01 (Elections - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); Rule 0530-1-2-.02 (Contributions - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); Rule 0530-1-2-.03 (Designation of Contributions for an Election - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); Rule 0530-1-2-.04 (Attribution of Contributions - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); Rule 0530-1-2-.05 (Bookkeeping Procedures - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); Rule 0530-1-2-.06 (Disclosure of Affiliation of Multicandidate Political Campaign Committees (PACs) - Official Compilation Rules and Regulations of the State of Tennessee - Tennessee Registry of Election Finance); and Rule 0530-1-2-.07 (Independent Expenditures - Official Compilation Rules and Regulations of the State of Tennessee — Tennessee Registry of Election Finance).

Acts 1999, ch. 463, § 1(a) provided that, with certain exceptions, permanent rules filed between January 1, 1998, and December 1, 1998, in effect on June 17, 1999, and due to expire on June 30, 1999, shall not expire on June 30, 1999, but shall remain in effect until repealed, amended or superseded.

Acts 2000, ch. 942, § 1 provided that, with certain exceptions, permanent rules filed between January 1, 1999, and December 31, 1999, in effect on June 21, 2000, and due to expire on June 30, 2000, shall not expire on June 30, 2000, but shall remain in effect until repealed, amended or superseded.

Acts 2001, ch. 436, § 1 provided that, with certain exceptions, permanent rules filed between January 1, 2000, and December 31, 2000, in effect on June 30, 2001, and due to expire on June 30, 2001, shall not expire on June 30, 2001, but shall remain in effect until repealed, amended or superseded.

Acts 2002, ch. 831, § 1 provided that, with certain exceptions, permanent rules filed between January 1, 2001, and December 31, 2001, in effect on June 30, 2002, and due to expire on June 30, 2002, shall not expire on June 30, 2002, but shall remain in effect until repealed, amended or superseded.

Acts 2003, ch. 412, § 1 provided that, with certain exceptions, permanent rules filed between January 1, 2002, and December 31, 2002, in effect on June 25, 2003, and due to expire on June 30, 2003, shall not expire on June 30, 2003, but shall remain in effect until repealed, amended or superseded.

Acts 2004, ch. 838, § 1 provided that, with certain exceptions, permanent rules filed after January 1, 2003, in effect on June 7, 2004, and due to expire on June 30, 2004, shall not expire on June 30, 2004, but shall remain in effect until repealed, amended or superseded.

Former § 4-5-226, concerning designation of date for automatic termination of rule, was transferred to § 4-5-227 pursuant to Acts 1997, ch. 162, § 1.

Acts 2005, ch. 464, § 1 provided that: "(a) All permanent rules duly filed in the office of secretary of state after January 1, 2004, that are in effect on June 18, 2005, and that are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2005, shall not expire on June 30, 2005, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency, or until otherwise superseded by force of law.

"(b) The provisions of this act shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a), if such rule conflicts with the provisions of any enactment other than § 4-5-226."

Acts 2006, ch. 918, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2005, that are

in effect on June 20, 2006, and that are scheduled for expiration by the provisions of § 4-5-226 on June 30, 2006, shall not expire on June 30, 2006, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law; and (b) The provisions of this act shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a), if such rule conflicts with the provisions of any enactment other than § 4-5-226.

Acts 2007, ch. 546, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2006, that are in effect on June 27, 2007, and that are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2007, shall not expire on June 30, 2007, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law; and (b) The provisions of this section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if such rule conflicts with the provisions of any enactment other than § 4-5-226.

Acts 2008, ch 1071, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2007, that are in effect on May 28, 2008, and that are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2008, shall not expire on June 30, 2008, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law; and

(b) The provisions of this section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if the rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedure Act, compiled in title 4, chapter 5.

Acts 2009, ch. 560, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2008, that are in effect on June 30, 2009, and that are scheduled for expiration by the provisions of § 4-5-226 on June 30, 2009, shall not expire on June 30, 2009, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

(b) These provisions shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if the rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Acts 2010, ch. 1085, § 1 provided that: "(a) Except as provided in subsection (c), all permanent rules duly filed in the office of secretary of state after January 1, 2009, which are in effect on June 23, 2010, and which are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2010, shall not expire on June 30, 2010, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

"(b) The provisions of this section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if such rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

"(c) Notwithstanding the provisions of subsection (a), or any provision of title 4, chapter 5, part 2 to the contrary, the following rule filed in the office of the secretary of state by the department of human services on October 29, 2009, relative to liens for child support shall expire on June 23, 2010: Child Support Services Division, Rule 1240-2-5-.13(3)(a)(1)."

Acts 2011, ch. 441, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2010, that are in effect on June 10, 2011, and that are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2011, shall not expire on June 30, 2011, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

(b) The provisions of this section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if such rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 870, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2011, that are in effect on May 1, 2012, and that are scheduled for expiration by § 4-5-226, on June 30, 2012, shall not expire on June 30, 2012, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

(b) This section shall not be construed to justify the continued effectiveness of any rule included within subsection (a) if such rule conflicts with any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2013, ch. 125, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2012, that are in effect on April 12, 2013, and that are scheduled for expiration by the provisions of § 4-5-

226 on June 30, 2013, shall not expire on June 30, 2013, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

(b) The provisions of this act section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if such rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2014, ch. 948, § 1 provided that: (a) All permanent rules duly filed in the office of secretary of state after January 1, 2013, that are in effect on May 19, 2014, and that are scheduled for expiration by the provisions of § 4-5-226, on June 30, 2014, shall not expire on June 30, 2014, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by force of law.

(b) The provisions of this section shall not be construed to justify the continued effectiveness of any rule included within the provisions of subsection (a) if such rule conflicts with the provisions of any enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2015, ch. 349, § 1 provided that: (a) Except as provided in subsection (c), all permanent rules filed in the office of secretary of state after January 1, 2014, that are in effect on May 4, 2015, and that are scheduled for expiration under§ 4-5-226, on June 30, 2015, shall not expire on June 30, 2015, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment. (b) This section shall not be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. (c) Notwithstanding subsection (a) or title 4, chapter 5, part 2, Tennessee Board of Optometry Rule 1045-02-.17, relative to the prohibition upon the practice of optometry in or in conjunction with any retail store or other commercial establishment where merchandise is displayed or offered for sale, and filed in the office of secretary of state on August 18, 2014, shall expire on May 4, 2015.

Acts 2016, ch. 929, § 1 provided that: (a) All permanent rules filed in the office of secretary of state after January 1, 2015, that are in effect on July 1, 2016, and that are scheduled for expiration under§ 4-5-226, on June 30, 2016, shall not expire on June 30, 2016, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment. (b) This section shall not be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2017, ch. 452, § 1 provided that, with certain exceptions, all permanent rules filed in the office of secretary of state after January 1, 2016, that are in effect on May 25, 2017 and that are scheduled for expiration under § 4-5-226, on June 30, 2017, shall not expire on June 30, 2017, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment.

Acts 2017, ch. 452, § 2 provided that the department of revenue shall be prohibited from collecting any internet sales or use taxes authorized under department rule 1320-05-01.129(2) and permitted under a ruling of any court, until such court's ruling has been fully reviewed and rule 1320-05-01.129(2) has been approved by the general assembly pursuant to § 4-5-226.

Acts 2018, ch. 942, § 1 provided that: (a) All permanent rules filed in the office of secretary of state on or after January 1, 2017, that are in effect on May 15, 2018, and that are scheduled for expiration under § 4-5-226, on June 30, 2018, shall not expire on June 30, 2018, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment. (b) This section shall not be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2019, ch. 429, § 1 provided that: (a) Except as provided in subsection (c), all permanent rules filed in the office of secretary of state after January 1, 2018, that are in effect on May 21, 2019, and that are scheduled for expiration under § 4-5-226, on June 30, 2019, shall not expire on June 30, 2019, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment. (b) This section shall not be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. (c) Notwithstanding subsection (a) or title 4, chapter 5, part 2, Tennessee Board of Funeral Directors and Embalmers Rule 0660-11-.05, relative to professional conduct, and filed in the office of secretary of state on December 12, 2018, shall expire on May 21, 2019.

Acts 2019, ch. 429, § 2 provided that: The department of revenue is no longer prohibited from collecting internet sales or use taxes pursuant to department rule 1320-05-01-.129(2), a rule that was scheduled to expire on June 30, 2017, as court rulings pertaining to such rule have been reviewed by the General Assembly.

Acts 2020, ch. 653, § 1 provided that: (a) Except as provided in subsection (c), all permanent rules filed in the office of secretary of state after January 1, 2019, that are in effect on April 2, 2020, and that are scheduled for expiration under § 4-5-226, on June 30, 2020, shall not expire on June 30, 2020, but shall remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment. (b) This section is not to be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. (c) Notwithstanding subsection (a) or title 4, chapter 5, part 2, the following rules expire on the effective date of this act: (1) Department of intellectual and developmental disabilities Rules 0465-01-04-.01 through 0465-01-04-.13, relative to public records, filed in the office of secretary of state on January 2, 2019; and (2) Board for professional counselors, marital and family therapists, and clinical pastoral therapists Rules 0450-01-.12 and 0450-01-.13, relative to continuing education and professional ethics for professional counselors; Rules 0450-02-.12 and 0450-02-.13, relative to continuing education and professional ethics for marital and family therapists; and Rules 0450-03-.12 and 0450-03-.13, relative to continuing education and professional ethics for clinical pastoral therapists, filed in the office of secretary of state on May 14, 2019.

Acts 2021, ch. 483, § 1 provided that: "(a) All permanent rules filed in the office of secretary of state after January 1, 2020, that are in effect on the effective date of this act, and that are scheduled for expiration under § 4-5-226, on June 30, 2021, do not expire on June 30, 2021, but remain in effect until repealed or amended by subsequent rule of the appropriate rulemaking agency or until otherwise superseded by legislative enactment.

"(b) This section is not to be construed to justify the continued effectiveness of any rule that will remain in effect under subsection (a) if the rule conflicts with the provisions of any legislative enactment other than the Uniform Administrative Procedures Act, compiled in title 4, chapter 5."

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.

The 2021 amendment substituted "proposed rules or rulemaking hearing rules" for "proposed rules" twice in the first sentence of (b)(2); and substituted "rule being proposed" for "rule proposed" in (i)(1)(I).

Effective Dates.

Acts 2021, ch. 531, § 16. July 1, 2021.

Attorney General Opinions.

The rules of both the private investigation commission and the board of polygraph examiners continued in effect as rules of the private investigation and polygraph commission following the renaming of the first commission and the dissolution of the second commission and the transfer of its functions and resources to the private investigation and polygraph commission, OAG 00-116, 2000 Tenn. AG LEXIS 118 (6/27/00).

To the extent that T.C.A. § 4-5-226 grants "veto" authority to a legislative committee reviewing rules, it violates the separation of powers doctrine, OAG 01-086, 2001 Tenn. AG LEXIS 77 (5/23/01).

4-5-227. Designation of date for automatic termination of rule.

Upon filing a rule with the secretary of state, an agency may designate a date on which the effectiveness of such rule will automatically terminate. Such a designation shall be made either within the substantive language of the rule or on a form provided for such purpose by the secretary of state and shall result, at the appropriate time, in the repeal and removal of such rule from the Official Compilation of Rules and Regulations of the State of Tennessee, published by the secretary of state, without any further rulemaking activity by the agency. Any rule that automatically expires under § 4-5-226, shall so expire pursuant to that section, notwithstanding the fact that the rulemaking agency may have designated a later date for the automatic termination of such rule under this section. This section shall not apply to emergency rules.

History.
Acts 1986, ch. 738, § 5; 1997, ch. 162, § 1; T.C.A., § 4-5-226; Acts 2009, ch. 566, § 20.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

4-5-228. Statement by proposing agency projecting whether new rule or regulation to have financial impact on local governments.

(a) On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues. If the statement says that the rule or regulation has a financial impact on local governments, the general assembly may request representatives of any affected local government to testify concerning its impact.

(b) The proposing agency shall submit a copy of the statement provided in subsection (a) to the secretary of state.

History.
Acts 2010, ch. 1070, § 2.

Compiler's Notes.
For the Preamble to the act regarding no law increasing expenditure requirements of cities or counties without state cost sharing, please refer to Acts 2010, ch. 1070.

4-5-229. Effective date of new fees or fee increases promulgated by state agency rule.

(a) Except as provided in subsections (b) and (c), any new fee or fee increase promulgated by state agency rule, in accordance with this chapter, shall take effect on July 1, following expiration of the ninety (90) days as provided in § 4-5-207.

(b) This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process.

(c) This section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

History.
Acts 2012, ch. 1067, § 1.

Compiler's Notes.
Acts 2012, ch. 1067, § 2 provided that the act, which enacted this section, shall apply to new fees and fee increases created by rules filed with the secretary of state after July 1, 2013.

4-5-230. Submission of list of adopted policies.

(a)(1) On July 1 of every year, each agency that is subject to review under chapter 29 of this title shall submit a list of all policies that have been

adopted by the agencies in the past year to the chair of the government operations committee of the senate and the chair of the government operations committee of the house of representatives.

(2) The information submitted under subdivision (a)(1) shall include a summary of the policy and the agency's justification for adopting a policy on the subject instead of promulgating a rule.

(b) The following information shall not be required to be submitted to the chairs of the committees under subdivision (a)(2):

(1) Records or other information deemed to be confidential under title 10, chapter 7, part 5 or otherwise not required to be disclosed or made available under § 10-7-503(a);

(2) Records or other information that are required by an agency of the federal government for the purposes of securing federal funds, complying with federal law, maintaining national security, or qualifying for or maintaining required accreditation, the failure of which could jeopardize the loss of a federal program, funds, or accreditation; and

(3) Statements, documents, or published materials, such as frequently asked questions, that are prepared and used in the course of general correspondence with persons or entities.

(c) This section shall apply to all policies that are proposed or developed by agencies on or after July 1, 2018.

History.
Acts 2018, ch. 929, § 3.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-5-231. Rules or policies that infringe on agency member's free speech prohibited — Power to remove member — Exception for state board of education.

(a) No agency created by statute and subject to review under chapter 29 of this title shall promulgate rules or implement policies that infringe on an agency member's freedom of speech in violation of the Constitution of Tennessee, Article I, § 19, or the First Amendment of the United States Constitution.

(b) An agency's appointing authority shall have sole power to remove a member from a board, commission, council, committee, authority, task force, or other similar multi-member agency created by statute and subject to review under chapter 29 of this title. This subsection (b) shall not impair the ability of the general assembly to reconstitute, restructure, or reestablish such agency.

(c) Subsection (b) does not apply to the state board of education.

History.
Acts 2018, ch. 929, § 3; 2021, ch. 493, § 36.

Effective Dates.
Acts 2021, ch. 493, § 53. May 25, 2021.

Amendments.
The 2021 amendment added (c).

PART 3

CONTESTED CASES

4-5-301. Conduct of contested cases.

(a) In the hearing of any contested case, the proceedings or any part thereof shall be conducted:

(1) In the presence of the requisite number of members of the agency as prescribed by law and in the presence of an administrative judge or hearing officer; or

(2) By an administrative judge or hearing officer sitting alone.

(b) It is the duty of the administrative judge or hearing officer to preside at the hearing, rule on questions of the admissibility of evidence, swear witnesses, advise the agency members as to the law of the case, and ensure that the proceedings are carried out in accordance with this chapter, other applicable law and the rules of the respective agency. At no time shall the administrative judge or hearing officer hearing a case with agency members under subsection (a) take part in the determination of a question of fact, unless the administrative judge or hearing officer is an agency member. An administrative judge or hearing officer shall, upon the judge's or the officer's own motion, or timely motion of a party, decide any procedural question of law.

(c) The agency shall determine whether a contested case shall be conducted by an administrative judge or hearing officer sitting alone or in the presence of members of the agency; provided, that administrative judges or hearing officers employed in the office of the secretary of state shall not be required to conduct a contested case sitting alone in the absence of agreement between the agency and the secretary of state.

(d) Contested cases under this section may be conducted by administrative judges or hearing officers employed in the office of the secretary of state upon the request of the agency being presented to the secretary of state and the request being granted.

(e) Any agency not authorized by law to have a contested case conducted by an administrative judge, hearing officer or similar officer from the agency shall direct that the proceedings or any part thereof be conducted by an administrative judge or hearing officer employed in the office of the secretary of state.

History.

Acts 1982, ch. 874, § 37; 1984, ch. 728, § 11.

Cross-References.

Number of agency members required to hear contested case, § 4-5-107.

Law Reviews.

Forfeitures Under the Tennessee Drug Control Act (Lewis L. Laska), 16 Mem. St. U.L. Rev. 431 (1986).

How Many Bites Are Enough? The Supreme Court's Decision in University of Tennessee v. Elliott (Robert P. Morris), 55 Tenn. L. Rev. 205 (1988).

Nonacquiescence: Outlaw Agencies, Imperial Courts, and the Perils of Pluralism (Deborah Maranville), 39 Vand. L. Rev. 471 (1986).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.

To the extent that it conflicts with the Uniform Administrative Procedures Act (UAPA), T.C.A. § 67-1-105(d) is superseded by the UAPA, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

If a contested case is heard by an adminis-

trative judge or hearing officer appointed by the commissioner of revenue under the authority of T.C.A. § 67-1-105(b)(2), the conduct of the contested case is governed by the provisions of the Uniform Administrative Procedures Act applicable to proceedings conducted by an administrative judge or hearing officer sitting alone; in those cases, the hearing officer is required to issue an initial order, which is reviewable by the commissioner, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

T.C.A. §§ 4-5-301(a)(1) and 4-5-314(a) do not apply when the commissioner elects to appoint an administrative judge or hearing officer to hold a contested case hearing sitting alone and in the absence of the commissioner, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

The HUD regulations do not preempt the Administrative Procedures Act under any of the theories of implied preemption. OAG 10-105, 2010 Tenn. AG LEXIS 111 (10/15/10).

The Tennessee Uniform Administrative Procedures Act ("UAPA") does not violate the Due Process Clause. Neither Title IX of the Education Amendments of 1972 nor the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act") preempts the UAPA contested-case provisions applicable to the adjudication of sexual assault claims involving students at Tennessee public institutions of higher education. Disciplinary proceedings in a school sexual assault case must be completed "promptly," but neither the Due Process Clause, nor Title IX, nor the Clery Act imposes any specified or fixed time limit for the completion of a UAPA contested-case proceeding in sexual assault cases. The Due Process Clause, Title IX, and the Clery Act all require that an accuser be allowed to participate in a hearing, and the UAPA gives all parties the right to participate in a contested case hearing. To comply with the requirements of Title IX, schools must independently investigate and adjudicate allegations of student-on-student sexual harassment and assault. Title IX would likely preempt a state law requiring public institutions to refer sexual assault or similar allegations to law enforcement before suspending or expelling a student. There is currently no federally codified evidentiary standard applicable to such disciplinary proceedings. However, guidance issued by the Department of Education interpreting Title IX regulations states that schools should apply a preponderance-of-evidence standard in disciplinary proceedings related to claims of sexual assault. OAG 17-03, 2017 Tenn. AG LEXIS 3 (1/17/2017).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Res Judicata.
3. Collateral Estoppel.
4. Hearing Committees.
5. Authority of Administrative Law Judge.

1. Construction.

Contested case proceedings involving certificates of authority for radio common carriers must be consistent not only with the State Radio Common Carrier Act, compiled in T.C.A. § 65-30-101 et seq., and the public service commission's enabling statutes but also with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; while the commission may conduct contested case proceedings itself, it may also appoint a hearing officer to hear all or any part of a particular case. Jackson Mobilphone Co. v. Tennessee Pub. Serv. Comm'n, 876 S.W.2d 106, 1993 Tenn. App. LEXIS 790 (Tenn. Ct. App. 1993), rehearing denied, 876 S.W.2d 106, 1994 Tenn. App. LEXIS 14 (Tenn. Ct. App. 1994).

One of the duties of an administrative judge set forth in the Uniform Administrative Procedures Act is to decide any procedural question of law, T.C.A. § 4-5-301(b); the issue of whether the environmental council's representative, a non-attorney, could file a petition for a declaratory order on behalf of a corporation constituted a procedural question of law, and therefore the administrative judge had the authority to decide the issue. Tenn. Envtl. Council v. Tenn. Water Quality Control Bd., 254 S.W.3d 396, 2007 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 3, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 174 (Tenn. Mar. 10, 2008).

2. Res Judicata.

Res judicata did not apply. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

3. Collateral Estoppel.

The doctrine of collateral estoppel was not applicable. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

4. Hearing Committees.

In a proceeding involving charges of sexual harassment against a university professor, a hearing committee consisting of two professors, a graduate student, and an undergraduate student satisfied the requirements of the Uniform Administrative Procedures Act. McClellan v. Board of Regents of the State Univ., 921 S.W.2d 684, 1996 Tenn. LEXIS 267 (Tenn. 1996).

5. Authority of Administrative Law Judge.

Second administrative judge's order exceeded the scope of his authority because neither the Uniform Administrative Procedures Act nor the Tennessee Petroleum Underground Storage Tank Act gave an administrative judge the authority to limit a party's legal arguments to the Tennessee Underground Storage Tanks and Solid Waste Disposal Control Board; and, by doing so, the judge's order infringed not only on the Tennessee Department of Environment and Conservation's statutory right to present a brief and an oral argument expressing its legal theories, but also on the Board's responsibility to review the initial order and render a final order. Tenn. Dep't of Env't & Conservation v. Roberts, — S.W.3d —, 2021 Tenn. App. LEXIS 43 (Tenn. Ct. App. Feb. 4, 2021).

4-5-302. Disqualification of judge, hearing officer, etc. — Substitutions.

(a) Any administrative judge, hearing officer or agency member shall be subject to disqualification for bias, prejudice, interest or any other cause provided in this chapter or for any cause for which a judge may be disqualified.

(b) Any party may petition for the disqualification of an administrative judge, hearing officer or agency member promptly after receipt of notice indicating that the individual will serve or, if later, promptly upon discovering facts establishing grounds for disqualification.

(c) A party petitioning for the disqualification of an agency member shall not be allowed to question the agency member concerning the grounds for disqualification at the hearing or by deposition unless ordered by the administrative judge or hearing officer conducting the hearing and agreed to by the agency member.

(d) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute shall be appointed, unless otherwise provided by law by:

(1) The governor, if the unavailable individual is a cabinet member or elected official, except that the speakers of the senate and house of representatives shall appoint a substitute for individuals elected by the general assembly; or

(2) The appointing authority, if the unavailable individual is an appointed official.

(f) Any action taken by a duly appointed substitute for an unavailable individual shall be as effective as if taken by the unavailable individual.

History.

Acts 1982, ch. 874, § 38.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

Analysis

1. Request for Disqualification.
2. Disqualification Standard.
3. —Bias.
4. Evidence.
5. Members Not Subject to Voir Dire.
6. Waiver.

1. Request for Disqualification.

It was not reversible error for the university to appoint one of its employees as an administrative judge, though unlike other administrative agencies it had not been statutorily autho-

rized to appoint one of its employees, where petitioner's counsel only requested a hearing officer be selected from outside the university hospital, and petitioner got what he requested. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

Where appellate court noted that the Tennessee health facilities commission had made its decision regarding petitioner's application for a certificate of need with the presence and participation of a member who had a conflict of interest, the appellate court had authority to remand the matter to the commission for a hearing on the issue without the presence of the conflicted member. Methodist Healthcare-Jackson Hosp. v. Jackson-Madison County Gen. Hosp. Dist., 129 S.W.3d 57, 2003 Tenn. App. LEXIS 369 (Tenn. Ct. App. 2003).

2. Disqualification Standard.

The disqualification standard applicable to rulemaking proceedings differs from that applicable to adjudicatory proceedings. Tennessee Cable Television Ass'n v. Tennessee Public Service Com., 844 S.W.2d 151, 1992 Tenn. App. LEXIS 583 (Tenn. Ct. App. 1992).

3. —Bias.

Bias in the form of a crystallized point of view about issues of law or policy is rarely, if ever, sufficient to require an agency member's disqualification from a rulemaking proceeding. Tennessee Cable Television Ass'n v. Tennessee Public Service Com., 844 S.W.2d 151, 1992 Tenn. App. LEXIS 583 (Tenn. Ct. App. 1992).

4. Evidence.

Persons seeking to disqualify an agency member from a rulemaking proceeding must support their motion by clear and convincing evidence. Tennessee Cable Television Ass'n v. Tennessee Public Service Com., 844 S.W.2d 151, 1992 Tenn. App. LEXIS 583 (Tenn. Ct. App. 1992).

Evidence was insufficient to require recusal of public service commissioners for having prejudged issues. Tennessee Cable Television Ass'n v. Tennessee Public Service Com., 844 S.W.2d 151, 1992 Tenn. App. LEXIS 583 (Tenn. Ct. App. 1992).

5. Members Not Subject to Voir Dire.

Members of the board for licensing health care facilities were not subject to voir dire by a petitioner at a hearing. Ogrodowczyk v. Tennessee Bd. for Licensing Health Care Facilities, 886 S.W.2d 246, 1994 Tenn. App. LEXIS 336 (Tenn. Ct. App. 1994).

6. Waiver.

County waived its objection to the Executive Secretary of the Tennessee State Board of Equalization serving as the administrative law judge (ALJ) when the county sought to set aside an agreed assessment order because the county had ample notice that the Secretary signed certificates of assessment and was presiding over the motion to set aside, but failed to raise the ALJ's purported conflict of interest until its appeal to the trial court. Further, the county's evidence fell far short of rebutting the presumption that the ALJ carried out the ALJ's duties with honesty and integrity. Anderson Cty. Tenn. v. Tenn. State Bd. of Equalization, — S.W.3d —, 2020 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 533 (Tenn. Sept. 16, 2020).

4-5-303. Separation of functions.

(a) A person who has served as an investigator, prosecutor or advocate in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(b) A person who is subject to the authority, direction or discretion of one who has served as investigator, prosecutor or advocate in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(c) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may not serve as an administrative judge or hearing officer or assist or advise an administrative judge or hearing officer in the same proceeding.

(d) A person may serve as an administrative judge or hearing officer at successive stages of the same contested case, unless a party demonstrates grounds for disqualification in accordance with § 4-5-302.

(e) A person who has participated in a determination of probable cause or other equivalent preliminary determination or participated in or made a

decision that is on administrative appeal in a contested case may serve as an agency member in the contested case where authorized by law and not subject to disqualification or other cause provided in this chapter.

History.
Acts 1982, ch. 874, § 39.

Law Reviews.
Forfeitures Under the Tennessee Drug Control Act (Lewis L. Laska), 16 Mem. St. U.L. Rev. 431 (1986).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Violation.
When the disability claims of city workers were initially decided by a risk manager, who, if they appealed the denials of their claims, also sat on a review panel which issued a final decision on their claims, this violated T.C.A. § 4-5-303, because one involved in a preliminary determination of an administrative decision could not participate in a later review of that decision. Tidwell v. City of Memphis, 193 S.W.3d 555, 2006 Tenn. LEXIS 433 (Tenn. 2006).

4-5-304. Ex parte communications.

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative judge, hearing officer or agency member without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative judge, hearing officer or agency member in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that

these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

(f) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section may be disqualified if necessary to eliminate the effect of the communication.

(g) The agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

History.
Acts 1982, ch. 874, § 41.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Application.
Although members of the health facilities commission received informal, ex parte communications, since this chapter was not yet in effect and since the information was honestly received and did not materially affect the ultimate decision of the commission, the ex parte communications did not amount to reversible error. Humana of Tennessee v. Tennessee Health Facilities Com., 551 S.W.2d 664, 1977 Tenn. LEXIS 524 (Tenn. 1977).

4-5-305. Representation.

(a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, other representative.

History.
Acts 1982, ch. 874, § 43.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

Attorney General Opinions.
Even though Administrative Law Judges have already limited nonlawyer corporate representatives to giving an oral statement on the record, the nonlawyer representative of a corporation should exercise caution when providing an oral statement as this practice would appear to present the potential for the unauthorized practice of law that could only be resolved on a case-by-case basis, OAG 04-160, 2004 Tenn. AG LEXIS 172 (11/10/04).

NOTES TO DECISIONS

Analysis

1. Notice.
2. Representation.

1. Notice.
The failure of the department of employment security to inform plaintiff of the availability of free or low-cost representation does not per se show prejudice and require that a new hearing be conducted on plaintiff's claim. Simmons v. Traughber, 791 S.W.2d 21, 1990 Tenn. LEXIS 213 (Tenn. 1990).

Where employer had an attorney who examined the documentary evidence prior to the hearing, and plaintiff did not have an attorney or access to the documentary evidence prior to the hearing, was a laborer, had no legal training or experience, and was not able to adequately express herself at the hearing, department of employment security's failure to inform plaintiff of her right to free or low-cost representation resulted in prejudice to plaintiff. Simmons v. Traughber, 791 S.W.2d 21, 1990 Tenn. LEXIS 213 (Tenn. 1990).

Where notice department of employment security sent plaintiff stated: "You may be represented by counsel or other authorized representative at your own expense," notice did not adequately inform plaintiff of her right to be represented at the hearing, because the tone of the notice was negative and misleading, and for many unemployed claimants, a notice that they can be represented by counsel at their own expense will terminate their interest in obtaining an attorney and seeking benefits under the statute; and because plaintiff did not receive full and meaningful notice of her right to be represented by counsel before the appeals tribunal, she was denied her statutory right to a fair hearing. Simmons v. Traughber, 791 S.W.2d 21, 1990 Tenn. LEXIS 213 (Tenn. 1990).

2. Representation.

When the disability claims of city workers were decided by a review panel which issued a final decision on their claims, but they were not allowed to be represented by counsel before this panel, this violated T.C.A. § 4-5-305, giving them the right to be represented by counsel, at their own expense. Tidwell v. City of Memphis, 193 S.W.3d 555, 2006 Tenn. LEXIS 433 (Tenn. 2006).

T.C.A. § 4-5-305(a) provides that a duly authorized representative of a corporation may participate as a representative in a hearing; however, the environmental council's representative, as a non-attorney, could not participate, as the petition for declaratory order required a non-attorney to exercise professional judgment of an attorney. Tenn. Envtl. Council v. Tenn. Water Quality Control Bd., 254 S.W.3d 396, 2007 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 3, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 174 (Tenn. Mar. 10, 2008).

4-5-306. Prehearing conferences.

(a)(1) In any action set for hearing, the administrative judge or hearing officer assigned to hear the case, upon the administrative judge's or the hearing officer's own motion, or upon motion of one (1) of the parties or such party's qualified representatives, may direct the parties or the attorneys for the parties, or both, to appear before the administrative judge or hearing officer for a conference to consider:

(A) The simplification of issues;

(B) The necessity or desirability of amendments to the pleadings;

(C) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(D) The limitation of the number of expert witnesses; and

(E) Such other matters as may aid in the disposition of the action.

(2) The administrative judge or hearing officer shall make an order that recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and that limits the issues for hearing to those not disposed of by admissions or agreements of the parties, and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(b) Upon reasonable notice to all parties, the administrative judge or hearing officer may convene a hearing or convert a prehearing conference to a hearing, to be conducted by the administrative judge or hearing officer sitting alone, to consider argument or evidence, or both, on any question of law. The

administrative judge or hearing officer may render an initial order, as otherwise provided by this chapter, on the question of law.

(c) In the discretion of the administrative judge or hearing officer, all or part of the prehearing conference may be conducted by telephone, television or other electronic means, if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(d) If a prehearing conference is not held, the administrative judge or hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

History.
Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-514, 4-5-108(d); Acts 1982, ch. 874, §§ 44, 54.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-307. Notice of hearing.

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) In all proceedings the notice shall include:

(1) A statement of the time, place, nature of the hearing, and the right to be represented by counsel;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon timely, written application a more definite and detailed statement shall be furnished ten (10) days prior to the time set for the hearing.

History.
Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-514, 4-5-108(a), (b); Acts 1982, ch. 874, §§ 45, 54.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Application.
In a proceeding involving charges of sexual harassment against a university professor, notice was sufficient, where such notice advised the professor that he could appear before a hearing committee conducted in accordance with the Uniform Administrative Procedures Act and contained allegations of fact plainly stating the allegations. McClellan v. Board of Regents of the State Univ., 921 S.W.2d 684, 1996 Tenn. LEXIS 267 (Tenn. 1996).

Tennessee Board of Chiropractic Examiners properly revoked a chiropractor's license as the chiropractor failed to show prejudice from an amendment to the notice of charges that satisfied T.C.A. § 4-5-307(a)(3) by alleging that chiropractor operated at least one clinic in Tennessee that offered chiropractic and/or medical

services, in addition to operating an office in Florida, which the chiropractor used to telemarket accident victims in Tennessee for the chiropractor's Tennessee clinics. Byrd v. Tenn. Bd. of Chiropractic Examiners, — S.W.3d —, 2011 Tenn. App. LEXIS 440 (Tenn. Ct. App. Aug. 11, 2011), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 1178 (Tenn. Dec. 13, 2011), cert. denied, Byrd v. Tenn. Bd of Chiropractic Exam'rs, 182 L. Ed. 2d 869, 132 S. Ct. 2109, 566 U.S. 975, 2012 U.S. LEXIS 3329.

4-5-308. Filing pleadings, briefs, motions, etc. — Service.

(a) The administrative judge or hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections and offers of settlement.

(b) The administrative judge or hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by agency rule.

History.

Acts 1982, ch. 874, § 46.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Summary Judgment.

Administrative law judge (ALJ) did not lacked the authority to grant a motion for summary judgment in favor of the Tennessee Board of Education, because the regulations promulgated by the Tennessee Department of State provided that administrative agencies could use the Tennessee Rules of Civil Procedure for guidance in determining the procedure to follow in situations not specifically addressed by the Department of State Rules, and the Uniform Administrative Procedures Act directed the ALJ to permit the parties to submit motions at appropriate stages in the proceedings and the Department of State Rules allowed parties in a contested case to seek relief in the form of a motion. Yokley v. State Bd. of Educ., 305 S.W.3d 523, 2009 Tenn. App. LEXIS 337 (Tenn. Ct. App. May 19, 2009), appeal denied, — S.W.3d —, 2009 Tenn. LEXIS 755 (Tenn. Nov. 23, 2009).

4-5-309. Default.

(a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of a contested case, the administrative judge or hearing officer, hearing the case alone, or agency, sitting with the administrative judge or hearing officer, may hold the party in default and either adjourn the proceedings or conduct them without the participation of that party, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(b) If the proceedings are conducted without the participation of the party in default, the administrative judge or hearing officer, hearing the case alone, shall include in the initial order a written notice of default, otherwise, the agency, sitting with the administrative judge or hearing officer, shall include such written notice of default in the final order. If the proceedings are adjourned and not conducted, the administrative judge or hearing officer, hearing the case alone, may render an initial default order, otherwise, the agency, sitting with the administrative judge or hearing officer, may render a

final default order. All default orders and notices of default in default orders shall include a written statement of the grounds for the default.

(c) A party may petition to have a default set aside by filing a timely petition for reconsideration as provided in § 4-5-317.

(d) If a party fails to file a timely petition for reconsideration or the petition is not granted, the administrative judge or hearing officer, sitting alone, or agency, sitting with the administrative judge or hearing officer, shall conduct any further proceedings necessary to complete the contested case without the participation of the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

History.
Acts 1982, ch. 874, § 47.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-310. Intervention.

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limiting the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

(d) The administrative judge, hearing officer or agency, at least twenty-four (24) hours before the hearing, shall render an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The administrative judge, hearing officer or agency

may modify the order at any time, stating the reasons for the modification. The administrative judge, hearing officer or agency shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

History.
Acts 1982, ch. 874, § 48.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.
Regulatory board's authority to approve settlement in absence of intervenor approval. OAG 11-6, 2011 Tenn. AG LEXIS 6 (1/11/11).

NOTES TO DECISIONS

1. Applicability.
Citizen moved, pursuant to Tenn. R. Civ. P. 24.01, seeking to intervene in an administrative proceedings before the administrative law judge; the ALJ denied the motion and pointed out that applications to intervene were governed by T.C.A. § 4-5-310 and Tenn. Comp. R. & Regs. 1360-4-1-.12, and not by Tenn. R. Civ. P. 24. Wood v. Metro. Nashville & Davidson County Gov't, 196 S.W.3d 152, 2005 Tenn. App. LEXIS 806 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 579 (2006).

4-5-311. Discovery — Subpoenas — Protective orders.

(a) The administrative judge or hearing officer, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. The administrative judge or hearing officer shall decide any objection relating to discovery under this chapter or the Tennessee Rules of Civil Procedure. Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(b) In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or of the refusal of any person to testify in any matter regarding which such person may be interrogated lawfully in a proceeding before an agency, the agency may apply to the circuit or chancery court of the county of such person's residence, or to any judge or chancellor thereof, for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith, the court shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the court shall enter an order requiring compliance. Disobedience of such order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

(c) The agency may promulgate rules to further prevent abuse and oppression in discovery.

(d) Any party to a contested case shall have the right to inspect the files of

the agency with respect to the matter and to copy therefrom, except that records, the confidentiality of which is protected by law, may not be inspected.

History.
Acts 1974, ch. 725, §§ 10, 11; 1975, ch. 370, § 4; 1978, ch. 938, §§ 9, 10, 11; T.C.A., §§ 4-516, 4-517, 4-5-110(b), 4-5-111(c); Acts 1982, ch. 874, §§ 49, 50.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.
Confidentiality of public records, § 10-7-504.

Textbooks.
Tennessee Criminal Practice and Procedure (Raybin), § 23.10.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-312. Procedure at hearing.

(a) The administrative judge or hearing officer shall regulate the course of the proceedings, in conformity with the prehearing order if any.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative judge or hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(c) In the discretion of the administrative judge or hearing officer and agency members and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

(d) The hearing shall be open to public observation pursuant to title 8, chapter 44, unless otherwise provided by state or federal law. To the extent that a hearing is conducted by telephone, television or other electronic means, the availability of public observation shall be satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape recording and to inspect any transcript obtained by the agency, except as otherwise provided by § 50-7-701.

History.
Acts 1982, ch. 874, § 51.

Law Reviews.
Bid Protests in Tennessee (Steven W. Feldman), 34 No. 5 Tenn. B.J. 27 (1998).
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

Analysis

1. Expert.
2. Contested Case Hearing.

1. Expert.
The right of an architect facing the loss or suspension of professional licensure to cross-examine the evidence, under T.C.A. § 4-5-312(b), in a hearing before the disciplinary board, required that expert testimony be presented at that hearing in support of the allegations. Martin v. Sizemore, 78 S.W.3d 249, 2001 Tenn. App. LEXIS 616 (Tenn. Ct. App. 2001).

2. Contested Case Hearing.

In contrast to jury deliberations, which are private, when the matter involves a board's deliberations, which are open to public observation, the court find that the Tenn. R. Evid. 606(b) restrictions do not extend to this situation. Tenn. Dep't of Health v. Collins, — S.W.3d —, 2020 Tenn. App. LEXIS 532 (Tenn. Ct. App. Nov. 25, 2020).

State claimed that extrinsic information introduced by a panel member during board deliberations prejudiced the State, as the specific documents referred to by the board member had not been introduced as evidence and were not admissible to prove the standard of care; the court affirmed the decision of the trial court that reversed and remanded the board's final order, both because it was made upon unlawful procedure and was characterized by an abuse of discretion or clearly unwarranted exercise of discretion. Tenn. Dep't of Health v. Collins, — S.W.3d —, 2020 Tenn. App. LEXIS 532 (Tenn. Ct. App. Nov. 25, 2020).

4-5-313. Rules of evidence — Affidavits — Official notice.

In contested cases:

(1) The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and to agency statutes protecting the confidentiality of certain records, and shall exclude evidence which in its judgment is irrelevant, immaterial or unduly repetitious;

(2) At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce in evidence, together with a notice in the form provided in subdivision (4). Unless the opposing party, within seven (7) days after delivery, delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as provided in this subdivision (2), the affidavit shall not be admitted into evidence. "Delivery" for purposes of this section means actual receipt;

(3) The officer assigned to conduct the hearing may admit affidavits not submitted in accordance with this section where necessary to prevent injustice;

(4) The notice referred to in subdivision (2) shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ will be
(here insert name of affiant)
introduced as evidence at the hearing in _____.
(here insert title of proceeding)
_____ will not be called to testify orally and you will
(Here insert name of affiant)
not be entitled to question such affiant unless you notify
_____ at
(here insert name of proponent or proponent's attorney)
_____ that you wish to cross-examine such affiant.
(here insert address)
To be effective, your request must be mailed or delivered to

_____

(here insert name of proponent or the proponent's attorney)
on or before _____

(here insert a date seven (7) days after the date of mailing or

_____

delivering the affidavit to the opposing party.);

(5) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available; and

(6)(A) Official notice may be taken of:

(i) Any fact that could be judicially noticed in the courts of this state;

(ii) The record of other proceedings before the agency;

(iii) Technical or scientific matters within the agency's specialized knowledge; and

(iv) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association;

(B) Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

History.

Acts 1974, ch. 725, § 9; 1978, ch. 938, §§ 6-8; T.C.A., §§ 4-515, 4-5-109; Acts 1982, ch. 874, § 52.

Cross-References.

Confidentiality of public records, § 10-7-504.

Rule Reference.

This section is referred to in the Advisory Commission Comments under Rule 101 of the Tennessee Rules of Evidence.

Textbooks.

Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppeard), Rule 101, § 802.2.

Law Reviews.

Forfeitures Under the Tennessee Drug Control Act (Lewis L. Laska), 16 Mem. St. U.L. Rev. 431 (1986).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.

Confidentiality of audit information obtained by the ethics commission. OAG 13-88, 2013 Tenn. AG LEXIS 87 (11/6/13).

NOTES TO DECISIONS

Analysis

1. Judicial Notice.
2. —Agency Rules.
3. —Municipal Ordinances.
4. Admissibility.

1. Judicial Notice.

2. —Agency Rules.

Administrative agencies may take official notice of the rules of state administrative agencies that have been promulgated by authority of law, have statewide application, and are easily ascertainable. Acuff v. Commissioner of Tennessee Dep't of Labor, 554 S.W.2d 627, 1977 Tenn. LEXIS 645 (Tenn. 1977).

3. —Municipal Ordinances.

Courts may not take judicial notice of municipal ordinances because they are not readily available and may be amended at frequent intervals. Metropolitan Government of Nash-

ville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

4. Admissibility.

Teacher's discharge was proper under T.C.A. § 49-5-511, because there was corroborating evidence from one student who testified that he saw the teacher and a student hugging and kissing at the teacher's residence in the back of his business, and there was other corroborating circumstantial evidence as well. Given the corroborating evidence, the testimony was admissible as substantive evidence of sexual activity between the teacher and the student and the teacher's argument that the hearsay was improper impeachment by inconsistent statements rang hollow, T.C.A. § 4-5-313(1). Crosby v. Holt, 320 S.W.3d 805, 2009 Tenn. App. LEXIS 881 (Tenn. Ct. App. Dec. 28, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 705 (Tenn. Aug. 25, 2010).

Exhibit indicated that there was a fact-finding hearing and identified the allegations against appellant, but the substance of the actual statements made to the supervisor were hearsay; the commissioner explained that she considered the fact that the supervisor took statements from additional witnesses as evidence that the city did not act arbitrarily in commencing the disciplinary proceedings and the commissioner did not abuse her discretion in admitting the exhibit for a limited purpose. Washington v. City of Memphis Civil Serv. Comm'n, — S.W.3d —, 2021 Tenn. App. LEXIS 48 (Tenn. Ct. App. Feb. 8, 2021).

Court rejected appellant's argument that his conduct would not constitute solicitation in violation of city disciplinary policies and uncorroborated hearsay was not the sole evidence of appellant's wrongful acts. Washington v. City of Memphis Civil Serv. Comm'n, — S.W.3d —, 2021 Tenn. App. LEXIS 48 (Tenn. Ct. App. Feb. 8, 2021).

Appellant could not complain about the admission or consideration of an exhibit because he admitted it into evidence. Washington v. City of Memphis Civil Serv. Comm'n, — S.W.3d —, 2021 Tenn. App. LEXIS 48 (Tenn. Ct. App. Feb. 8, 2021).

Administrative judge properly excluded several email conversations containing statements as to the interpretation of the federal federal Deficit Reduction Act as they were irrelevant as to whether the reimbursement rules actually complied with T.C.A. § 71-5-108. Dep't of Fin. & Admin. v. Chattanooga-Hamilton Cty. Hosp. Auth., — S.W.3d —, 2021 Tenn. App. LEXIS 82 (Tenn. Ct. App. Mar. 5, 2021).

4-5-314. Final order — Initial order.

(a) An agency with statutory authority to decide a contested case shall render a final order.

(b) If an administrative judge or hearing officer hears a case alone under § 4-5-301(a)(2), the administrative judge or hearing officer shall render an initial order, which shall become a final order unless reviewed in accordance with § 4-5-315.

(c) A final order, initial order or decision under § 50-7-304 shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order. An initial order or decision shall include a statement of any circumstances under which the initial order or decision may, without further notice, become a final order.

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The agency member's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

(e) If an individual serving or designated to serve as an administrative judge, hearing officer or agency member becomes unavailable, for any reason,

before rendition of the final order or initial order or decision, a substitute shall be appointed as provided in § 4-5-302. The substitute shall use any existing record and may conduct any further proceedings as is appropriate in the interest of justice.

(f) The administrative judge or hearing officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order rendered pursuant to subsection (a) or initial order rendered pursuant to subsection (b) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless such period is waived or extended with the written consent of all parties or for good cause shown.

(h) The agency shall cause copies of the final order under subsection (a) and the administrative judge or hearing officer shall cause copies of the initial order under subsection (b) to be delivered to each party.

History.

Acts 1982, ch. 874, § 54.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.

If a contested case is heard by an administrative judge or hearing officer appointed by the commissioner of revenue under the authority of T.C.A. § 67-1-105(b)(2), the conduct of the contested case is governed by the provisions of the Uniform Administrative Procedures Act applicable to proceedings conducted by an administrative judge or hearing officer sitting alone; in those cases, the hearing officer is required to issue an initial order, which is reviewable by the commissioner, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

T.C.A. §§ 4-5-301(a)(1) and 4-5-314(a) do not apply when the commissioner elects to appoint an administrative judge or hearing officer to hold a contested case hearing sitting alone and in the absence of the commissioner, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

NOTES TO DECISIONS

Analysis

1. Provisions Mandatory.
2. Waiver.
3. Substantial Compliance.
4. Noncompliance.
5. Violation of 90-day Rule.
6. Final Order.
7. Agency Findings.
8. Appeal and Review.

1. Provisions Mandatory.

That portion of this section that requires final decisions to include findings of fact, conclusions of law and reasons for the ultimate decision is not a mere technicality but an absolute necessity. Levy v. State Board of Examiners for Speech Pathology & Audiology, 553 S.W.2d 909, 1977 Tenn. LEXIS 594 (Tenn. 1977).

2. Waiver.

Although the final decision of the commission was omitted from the record, since extensive evidence was presented to the chancery court and plaintiff never made mention of the omission in that court, this procedural irregularity was deemed waived. Humana of Tennessee v. Tennessee Health Facilities Com., 551 S.W.2d 664, 1977 Tenn. LEXIS 524 (Tenn. 1977).

Trial court properly granted a firefighter summary judgment in his action to enforce the Civil Service Commission's decision because the decision awarding him full back pay and benefits became final pursuant, and as a result, the city waived the affirmative defense of mitigation of damages; the city could have filed a petition for reconsideration with the Commission or appealed the decision to the trial court within the time prescribed by statute, but the city did neither of those things. Wallace v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 219 (Tenn. Ct. App. May 6, 2019).

3. Substantial Compliance.

A written finding by a state university advisory committee that students were guilty as charged of assault and battery, the written charge specifying the date, place and victims, substantially complied with this section. State Board of Regents of University v. Gray, 561

S.W.2d 140, 1978 Tenn. LEXIS 573 (Tenn. 1978).

While the County Civil Service Merit Review Board's decision failed to include a conclusions of law section heading, the basis of the Board's determination was apparent from the content of the written decision and the record as a whole Macon v. Shelby County Gov't Civ. Serv. Merit Bd., 309 S.W.3d 504, 2009 Tenn. App. LEXIS 643 (Tenn. Ct. App. Sept. 25, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 284 (Tenn. Mar. 15, 2010).

4. Noncompliance.

Where the board of examiners after an evidentiary hearing concluded that plaintiffs could not be licensed pursuant to statute because they had not been engaged in the practice of audiology as defined by statute, but failed to make specific findings regarding deficiencies in plaintiffs' experiences or how that experience failed to qualify as the practice of audiology, the requirements of this section were not met. Levy v. State Board of Examiners for Speech Pathology & Audiology, 553 S.W.2d 909, 1977 Tenn. LEXIS 594 (Tenn. 1977).

An opinion by hearing examiners that discusses in a general manner the approaches used in granting some licenses and denying others and that concludes abruptly that a particular license be granted or denied does not satisfy the requirements of this section. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

5. Violation of 90-day Rule.

Where no prejudice has been shown, violation of the 90-day rule in this section re rendering orders in writing within 90 days does not nullify a forfeiture hearing or order pursuant to T.C.A. § 55-5-108. Garrett v. State, Dep't of Safety, 717 S.W.2d 290, 1986 Tenn. LEXIS 842 (Tenn. 1986); Daley v. University of Tenn., 880 S.W.2d 693, 1994 Tenn. App. LEXIS 142 (Tenn. Ct. App. 1994).

6. Final Order.

Letter by civil service commission that informed employee that the employee was not entitled to a grievance with regard to written reprimand, and that stated unequivocally that no further sort of administrative review was available, was a final agency order and not an initial order. Davis v. Tennessee Dep't of Empl. Sec., 23 S.W.3d 304, 1999 Tenn. App. LEXIS 814 (Tenn. Ct. App. 1999), review or rehearing denied, 23 S.W.3d 304, 2000 Tenn. App. LEXIS 19 (Tenn. Ct. App. 2000).

Prisoner's declaratory judgment action was not time-barred under T.C.A. § 4-5-223(a) in that it was filed after sixty days from the date that the department of corrections in a letter stated that it denied the prisoner's application for a declaratory order because the letter did not constitute a final order under T.C.A. § 4-5-322(b)(1) and T.C.A. § 4-5-314(c); rather, the provisions of T.C.A. § 4-5-225 applied, and because there was no express limitation period under the provisions, the general ten-year limitations period of T.C.A. § 28-3-110 applied. Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

Trial court erred in awarding post-judgment interest from the date of its order granting summary judgment because the Civil Service Commission's decision became a final order on the date it awarded a firefighter full back pay and benefits, and post-judgment interest began to accrue on that date. Wallace v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 219 (Tenn. Ct. App. May 6, 2019).

7. Agency Findings.

Where a sheriff's department terminated a corrections office (CO) who appeared in a video, professing to be a gang member, for violating department rules, as the trial court did not make findings on the CO's claim that his free speech rights under U.S. Const. amend. I were violated, the trial court's reversal of the Tennessee Civil Service Merit Board's decision affirming the termination was reversed and the case was remanded to the Board to making findings on that issue. Parker v. Shelby County Gov't Civil Serv. Merit Bd., 392 S.W.3d 603, 2012 Tenn. App. LEXIS 680 (Tenn. Ct. App. Sept. 27, 2012), appeal denied, Parker v. Shelby County Gov't Civ. Serv. Merit Bd., — S.W.3d —, 2013 Tenn. LEXIS 31 (Tenn. Jan. 9, 2013).

8. Appeal and Review.

Denial of medical licensure in Tennessee to an applicant was not inappropriate because the decision by the Tennessee Board of Medical Examiners that the applicant's long absence from direct patient care necessitated a formal assessment before the applicant could engage in the practice of emergency medicine in Tennessee was not unclear, arbitrary and capricious, or unsupported by substantial and material evidence. Perez v. Tenn. Bd. of Med. Examiners, — S.W.3d —, 2019 Tenn. App. LEXIS 336 (Tenn. Ct. App. July 3, 2019).

4-5-315. Review of initial order.

(a) The agency upon the agency's motion may, and where provided by federal law or upon appeal by any party shall, review an initial order, except to the extent that:

(1) A statute or rule of the agency precludes or limits agency review of the initial order; or

(2) The agency in the exercise of discretion conferred by statute or rule of the agency:

(A) Determines to review some but not all issues, or not to exercise any review;

(B) Delegates its authority to review the initial order to one (1) or more persons; or

(C) Authorizes one (1) or more persons to review the initial order, subject to further review by the agency.

(b) A petition for appeal from an initial order shall be filed with the agency, or with any person designated for such purpose by rule of the agency, within fifteen (15) days after entry of the initial order. If the agency on its own motion decides to review an initial order, the agency shall give written notice of its intention to review the initial order within fifteen (15) days after its entry. The fifteen-day period for a party to file a petition for appeal or for the agency to give notice of its intention to review an initial order on the agency's own motion shall be tolled by the submission of a timely petition for reconsideration of the initial order pursuant to § 4-5-317, and a new fifteen-day period shall start to run upon disposition of the petition for reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency on its own motion, the petition for reconsideration shall be disposed of first, unless the agency determines that action on the petition for reconsideration has been unreasonably delayed.

(c) The petition for appeal shall state its basis. If the agency on its own motion gives notice of its intent to review an initial order, the agency shall identify the issues that it intends to review.

(d) The person reviewing an initial order shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties.

(e) The agency shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) Before rendering a final order, the agency may cause a transcript to be prepared, at the agency's expense, of such portions of the proceeding under review as the agency considers necessary.

(g) The agency may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency may order such temporary relief as is authorized and appropriate.

(h) A final order or an order remanding the matter for further proceedings pursuant to this section shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.

(i) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference to the initial order, all the matters required by § 4-5-314(c).

(j) The agency shall cause copies of the final order or order remanding the matter for further proceedings to be delivered to each party and to the administrative judge or hearing officer who conducted the contested case.

History.
Acts 1982, ch. 874, § 55; 2000, ch. 594, §§ 1, 2.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.
If a contested case is heard by an administrative judge or hearing officer appointed by the commissioner of revenue under the authority of T.C.A. § 67-1-105(b)(2), the conduct of the contested case is governed by the provisions of the Uniform Administrative Procedures Act applicable to proceedings conducted by an administrative judge or hearing officer sitting alone; in those cases, the hearing officer is required to issue an initial order, which is reviewable by the commissioner, OAG 02-071, 2002 Tenn. AG LEXIS 76 (5/29/02).

NOTES TO DECISIONS

Analysis

1. Waiver.
2. Deference Not Required.

1. Waiver.
Trial court properly granted a firefighter summary judgment in his action to enforce the Civil Service Commission's decision because the decision awarding him full back pay and benefits became final pursuant, and as a result, the city waived the affirmative defense of mitigation of damages; the city could have filed a petition for reconsideration with the Commission or appealed the decision to the trial court within the time prescribed by statute, but the city did neither of those things. Wallace v. City of Memphis, — S.W.3d —, 2019 Tenn. App. LEXIS 219 (Tenn. Ct. App. May 6, 2019).

2. Deference Not Required.
Commissioner's designee was not required to give the decision of the administrative law judge any deference whatsoever in issuing its final order. Ballard v. Tenn. Dep't of Health, — S.W.3d —, 2020 Tenn. App. LEXIS 207 (Tenn. Ct. App. May 8, 2020).

4-5-316. Stay.

A party may submit to the agency a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry unless otherwise provided by statute or stated in the initial or final order. The agency may take action on the petition for stay, either before or after the effective date of the initial or final order.

History.
Acts 1982, ch. 874, § 56.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-317. Reconsideration.

(a) Any party, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(b) The petition shall be disposed of by the same person or persons who rendered the initial or final order, if available.

(c) The person or persons who rendered the initial or final order that is the

subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings; or granting the petition and issuing a new order, initial or final, in accordance with § 4-5-314. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied.

(d) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record, and no new evidence shall be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

(e) The sixty-day period for a party to file a petition for review of a final order shall be tolled by granting the petition and setting the matter for further proceedings, and a new sixty-day period shall start to run upon disposition of the petition for reconsideration by issuance of a final order by the agency.

History.
Acts 1982, ch. 874, § 58; 2000, ch. 594, § 3.

Cross-References.
Petition for judicial review, time for filing not extended by time allotted for filing petition for reconsideration, § 4-5-322.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Applicability.
T.C.A. § 4-5-317 was not applicable to the recusal of an administrative law judge because the statute applied to petitions for reconsideration filed within 15 days after entry of an initial or final order. However, a county did not seek reconsideration of an agreed order within fifteen days, but sought extraordinary relief under the guidance of the civil rule pertaining to postjudgment relief for fraud or mistake. Anderson Cty. Tenn. v. Tenn. State Bd. of Equalization, — S.W.3d —, 2020 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 533 (Tenn. Sept. 16, 2020).

4-5-318. Effectiveness of new order.

(a) Unless a later date is stated in an initial or final order, or a stay is granted, an initial or final order shall become effective upon entry of the initial or final order. All initial and final orders shall state when the order is entered and effective.

(b) If the agency has utilized an administrative judge from the administrative procedures division of the office of the secretary of state, the initial or final order shall not be deemed entered until the initial or final order has been filed with the administrative procedures division.

(c) The agency shall establish which agency members, officials or employees may sign final orders rendered by the agency.

(d) A party may not be required to comply with a final order unless the final order has been mailed to the last known address of the party or unless the party has actual knowledge of the final order.

(e) A nonparty may not be required to comply with a final order unless the

agency has made the final order available for public inspection and copying or unless the nonparty has actual knowledge of the final order.

(f) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order in accordance with § 4-5-314 shall be as follows:

(1) When the initial order is entered, if administrative review is unavailable;

(2) When the agency enters an order stating, after a petition for appeal has been filed, that review will not be exercised, if discretion is available to make a determination to this effect; or

(3) Fifteen (15) days after entry of the initial order, if no party has filed a petition for appeal and the agency has not given written notice of its intention to exercise review.

(g) An initial order that becomes a final order in accordance with subsection (f) and § 4-5-314 shall be effective upon becoming a final order; provided, that:

(1) A party may not be required to comply with the final order unless the party has been served with or has actual knowledge of the initial order or of an order stating that review will not be exercised; and

(2) A nonparty may not be required to comply with the final order unless the agency has made the initial order available for public inspection and copying or the nonparty has actual knowledge of the initial order or of an order stating that review will not be exercised.

(h) This section shall not preclude an agency from taking immediate action to protect the public interest in accordance with § 4-5-320.

History.

Acts 1982, ch. 874, § 59; 2001, ch. 304, § 1.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-319. Agency record.

(a) An agency shall maintain an official record of each contested case under this chapter. The record shall be maintained for a period of time not less than three (3) years; provided, that the department of labor and workforce development shall be required to maintain the record for such period of time as shall be determined by the agency or otherwise required by law.

(b) The agency record shall consist solely of:

(1) Notice of all proceedings;

(2) Any prehearing order;

(3) Any motions, pleadings, briefs, petitions, requests and intermediate rulings;

(4) Evidence received or considered;

(5) A statement of matters officially noticed;

(6) Proffers of proof and objections and rulings thereon;

(7) Proposed findings, requested orders, and exceptions;

(8) The tape recording, stenographic notes or symbols, or transcript of the hearing;

(9) Any final order, initial order, or order on reconsideration;

(10) Staff memoranda or data submitted to the agency unless prepared and submitted by personal assistants and not inconsistent with § 4-5-304(b); and

(11) Matters placed on the record after an ex parte communication.

(c) A record, which may consist of a tape or similar electronic recording, shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party at such party's expense or may be transcribed by the agency at its expense. If the agency elects to transcribe the proceedings, any party shall be provided copies of the transcript upon payment to the agency of a reasonable compensatory fee.

(d) Except to the extent that this chapter or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in adjudicative proceedings under this chapter, and for judicial review thereof.

History.

Acts 1974, ch. 725, § 8; 1975, ch. 370, §§ 3, 12; 1978, ch. 938, §§ 4, 5; T.C.A., §§ 4-514, 4-5-108(g); Acts 1982, ch. 874, § 60; 1999, ch. 520, § 27; 2011, ch. 82, § 1.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Embracing Our Public Purpose: A Value-Based Lawyer-Licensing Model, 48 U. Mem. L. Rev. 351 (2017).

NOTES TO DECISIONS

Analysis

1. Record of Informal Conference.
2. Waiver.
3. Expert.

1. Record of Informal Conference.

The making or preservation of a record of the informal conference discussion of a decision is not deemed to be mandatory under ordinary circumstances; however, when the parties are present to hear such discussion or same is recorded by the commission, it is not reversible error for the reviewing court to consider such record to the extent that it may be material to the issues on review. South Cent. Bell Tel. Co. v. Tennessee Public Service Com., 579 S.W.2d 429, 1979 Tenn. App. LEXIS 305 (Tenn. Ct. App. 1979).

2. Waiver.

Although the final decision of the commission was omitted from the record, since extensive evidence was presented to the chancery court and plaintiff never made mention of the omission in that court, this procedural irregularity was deemed waived. Humana of Tennessee v. Tennessee Health Facilities Com., 551 S.W.2d 664, 1977 Tenn. LEXIS 524 (Tenn. 1977).

3. Expert.

Allowing board members to base decisions on personal knowledge and opinions, especially when the personal knowledge and opinions are not reflected in the record, without the introduction of supporting expert testimony, violates the principle in T.C.A. § 4-5-319(d) that the administrative record is the exclusive basis for the board's actions in adjudicative proceedings. Martin v. Sizemore, 78 S.W.3d 249, 2001 Tenn. App. LEXIS 616 (Tenn. Ct. App. 2001).

4-5-320. Proceedings affecting licenses.

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct that warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary action, including suspension of a license or other licensure restriction or action as may be appropriate to protect the public, may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

(d)(1) Notwithstanding subsection (c), in issuing an order of summary action against a license the agency shall use one (1) of the following procedures:

(A) The agency shall issue a notice to the licensee providing an opportunity for a prompt informal hearing, review or conference before the agency prior to the issuance of an order of summary action; or

(B) The agency shall proceed with the summary action and notify the licensee of the opportunity for an informal hearing, review or conference before the agency within seven (7) business days of the issuance of the order of summary action.

(2) The notice provided to the licensee may be provided by any reasonable means and shall inform the licensee of the reasons for the action or intended action of the agency and of the opportunity for an informal hearing, review or conference before the agency. The informal hearing, review or conference described by this subsection (d) shall not be required to be held under the contested case provisions of this chapter. The hearing, review or conference is intended to provide an informal, reasonable opportunity for the licensee to present the licensee's version of the situation to the person or entity authorized by law to take the summary action against the license involved. Whether the informal hearing, review or conference is held before or after an order of summary action, the sole issue to be considered is whether the public health, safety or welfare imperatively required emergency action by the agency.

History.

Acts 1974, ch. 725, § 16; T.C.A., §§ 4-522, 4-5-116; Acts 1982, ch. 874, § 61; 1993, ch. 458, § 2; 2020, ch. 594, §§ 1-4.

Law Reviews.

Business License Revocation: Is This What Tennessee Needs? (Linda Rose and Rose Paxtor), 44 Tenn. B.J. 23 (2008).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

Attorney General Opinions.

Statute of limitations regarding physician discipline. OAG 11-43, 2011 Tenn. AG LEXIS 45 (5/11/11).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Operation and Effect.

1. Applicability.

The procedural safeguards of the Administrative Procedures Act, compiled in title 4, chapter 5, are applicable to medical license revocation proceedings, and T.C.A. § 4-5-320(c) scrupulously protects the fundamental right of notice and an opportunity to be heard. Watts v. Burkhart, 978 F.2d 269, 1992 U.S. App. LEXIS 27830 (6th Cir. Tenn. 1992).

T.C.A. § 4-5-320 only dispenses with the procedural niceties that ordinarily attend contested cases; it does not change the definition of

a contested case contained in T.C.A. § 4-5-102. Am. Child Care v. State, 83 S.W.3d 148, 2001 Tenn. App. LEXIS 909 (Tenn. Ct. App. 2001).

2. Operation and Effect.

Title 4, chapter 5 does not operate to confer jurisdiction or grant powers to the alcoholic beverage commission beyond those authorized by the general assembly; it merely prescribes the procedures to be followed when the commission seeks to revoke a liquor license. Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

4-5-321. Administrative procedures division — Manual of policies and procedures — Code of conduct.

(a) There is created in the office of the secretary of state a division to be known as the administrative procedures division. This division has the responsibility to:

(1) Investigate any conflicts or inequities that may develop between federal administrative procedures, and state administrative procedures and propose any amendments to this chapter to correct those inconsistencies and inequities as they develop;

(2) Establish and maintain in cooperation with the office of the attorney general and reporter a pool of administrative judges and hearing officers, who shall be learned in the law;

(3) Establish and maintain in cooperation with the office of the attorney general and reporter a pool of court reporters for agency administrative hearing proceedings before the licensing boards that are under the supervision of the departments of commerce and insurance and of health; and

(4) Perform any and all other functions assigned to the secretary of state under this chapter and delegated by the secretary of state to the administrative procedures division.

(b) The secretary of state shall adopt by rule, promulgated in accordance with the rulemaking requirements of this chapter, a manual of policies and procedures, including a code of conduct, to be followed by all administrative judges and hearing officers.

History.

Acts 1974, ch. 725, § 21; 1975, ch. 370, § 17; 1978, ch. 938, § 16; 1979, ch. 371, § 2; T.C.A., §§ 4-527, 4-5-121(a); Acts 1982, ch. 874, § 62; 1984, ch. 728, § 12; 1986, ch. 738, § 4.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-322. Judicial review.

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) A state agency is considered to be an aggrieved person for the purpose of judicial review when the order is from a board, commission or other entity independent of the aggrieved agency. In such instances, judicial review under this chapter is permitted upon the request of the agency head and the approval of the attorney general and reporter.

(b)(1)(A)(i) Proceedings for review are instituted by filing a petition for review in chancery court.

(ii) Except as provided in subdivisions (b)(1)(B), venue for appeals of contested case hearings shall be in the chancery court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the chancery court of Davidson County.

(iii) Venue for appeals of contested case hearings involving TennCare determinations shall be in the chancery court of Davidson County.

(iv) Petitions seeking judicial review shall be filed within sixty (60) days after the entry of the agency's final order thereon.

(B)(i) A person who is aggrieved by a final decision of the department of human services or the department of children's services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the appropriate commissioner or in the county in which any one (1) or more of the petitioners reside.

(ii) A person who is aggrieved by the final determination of a hearing officer or local board of education in a special education hearing conducted pursuant to § 49-10-606 may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the petitioner resides.

(iii) A person who is aggrieved by any final decision of the Tennessee public utility commission, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals.

(2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

(c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted

until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.

(d) Within forty-five (45) days after service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the agency, except as otherwise provided in this chapter. The agency that issued the decision to be reviewed is not required to file a responsive pleading.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5)(A)(i) Except as provided in subdivision (h)(5)(B), unsupported by evidence that is both substantial and material in the light of the entire record;

(ii) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact;

(B)(i) Unsupported by a preponderance of the evidence in light of the entire record, if the administrative findings, inferences, conclusions, or

decisions were made by a board, council, committee, agency, or regulatory program created pursuant to title 63, chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31;

(ii) In determining whether the administrative findings, inferences, conclusions, or decisions are supported by a preponderance of the evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

(j) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

History.

Acts 1974, ch. 725, § 17; 1975, ch. 370, § 6; 1978, ch. 815, § 1; 1978, ch. 938, § 13; T.C.A., § 4-523; Acts 1980, ch. 478, § 1; T.C.A., § 4-5-117; Acts 1982, ch. 874, § 63; 1986, ch. 738, § 2; 1995, ch. 305, § 68; 2002, ch. 610, § 1; 2017, ch. 94, § 3; 2018, ch. 1021, § 1; 2019, ch. 107, § 44; 2021, ch. 461, § 4.

Compiler's Notes.

Acts 2002, ch. 610, § 2 provided that the 2002 amendment shall apply to any petition for judicial review filed on or after July 1, 2002.

Acts 2021, ch. 461, § 6 provided that the act, which amended this section, applies to disciplinary actions taken or information first received on or after May 18, 2021.

Amendments.

The 2021 amendment rewrote (h)(5) which read: "(5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record;

"(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact."

Effective Dates.

Acts 2021, ch. 461, § 6. May 18, 2021.

Cross-References.

Petition for judicial review, 60-day period for filing tolled by granting petition for reconsideration, § 4-5-317.

Rule Reference.

This section is referred to in the text and Advisory Commission Comments of Rule 12 of the Tennessee Rules of Appellate Procedure.

Textbooks.

Pritchard on Wills and Administration of Estates (4th ed., Phillips and Robinson), § 976.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 1-8-17, 1-8-17A, 2-12-1.

Tennessee Jurisprudence, 1 Tenn. Juris., Administrative Law, §§ 2, 3; 2 Tenn. Juris., Appeal and Error, § 268; 4 Tenn. Juris., Automobiles, § 31; 5 Tenn. Juris., Carriers, § 58; 21 Tenn. Juris., Public Utility Commission, §§ 2, 3, 5; 23 Tenn. Juris., Taxation, § 42.

Law Reviews.

Bid Protests in Tennessee (Steven W. Feldman), 34 No. 5 Tenn. B.J. 27 (1998).

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

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1. Constitutional Questions.

The chancery court, on judicial review or in a declaratory judgment action, may consider constitutional issues arising as the result of a contested case proceeding even though the issues were not raised in the agency or, if raised, were not addressed. Richardson v. Board of Dentistry, 913 S.W.2d 446, 1995 Tenn. LEXIS 788 (Tenn. 1995).

Plaintiff's argument that plaintiff was denied equal protection under the law was without merit, where the appraisal and assessment of properties, using the direct comparable sales method, was in compliance with the statutory requirement of T.C.A. § 67-5-601(a). Willamette Indus., Inc. v. Tennessee Assessment Appeals Comm'n, 11 S.W.3d 142, 1999 Tenn. App. LEXIS 611 (Tenn. Ct. App. 1999).

The mere fact that assessing agencies have employed different appraisal methods is, without more, of no constitutional moment; no authority suggests that any single appraisal methodology is mandated, to the exclusion of all others. Willamette Indus., Inc. v. Tennessee Assessment Appeals Comm'n, 11 S.W.3d 142, 1999 Tenn. App. LEXIS 611 (Tenn. Ct. App. 1999).

2. In General.

The reviewing court referred to in this section is the trial court and has no application to the court of appeals. Memphis Mobile Tel., Inc. v. Atkins, 584 S.W.2d 798, 1979 Tenn. App. LEXIS 318 (Tenn. Ct. App. 1979).

Where an agency is petitioned to issue a declaratory order pursuant to T.C.A. § 4-5-223 and the agency declines to convene a contested case hearing and issue the declaratory order, the petitioner is not subject to the sixty-day statute of limitations established by T.C.A. § 4-5-322(b)(1); rather, a complaint for declaratory judgment under T.C.A. § 4-5-225 is governed by Tennessee's general ten-year statute of limitations, codified at T.C.A. § 28-3-110(3) (now § 28-3-110(a)(3)). Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

3. Construction.

The courts of Tennessee have had the same power both before and after the adoption of the Uniform Administrative Procedures Act to review the actions of administrative bodies for violations of constitutional or statutory provisions. Louisville & N. R. Co. v. Public Service Com., 493 F. Supp. 162, 1978 U.S. Dist. LEXIS 17954 (M.D. Tenn. 1978), aff'd, 631 F.2d 426, 1980 U.S. App. LEXIS 13669 (6th Cir. Tenn. 1980).

In termination of tenured state university faculty proceedings, T.C.A. §§ 49-8-302 — 49-8-304 apply, rather than the more general provisions of the Uniform Administrative Procedures Act. Frye v. Memphis State University, 671 S.W.2d 467, 1984 Tenn. LEXIS 927 (Tenn. 1984).

Where petitioner pursued a Title VII civil rights claim in federal court rather than seeking review of administrative proceedings in state court under T.C.A. § 4-5-322, res judicata did not foreclose the action in federal court. University of Tennessee v. Elliott, 478 U.S. 788, 106 S. Ct. 3220, 92 L. Ed. 2d 635, 1986 U.S. LEXIS 142 (1986).

The term de novo as applied to judicial review and as contemplated by T.C.A. § 67-5-1511 means a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence that either party wishes to adduce relevant to any issue. On the other hand the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, by its terms, restricts review to the record except for irregularities in procedure not shown by the record. Richardson v. Tennessee Assessment Appeals Com., 828 S.W.2d 403, 1991 Tenn. App. LEXIS 742 (Tenn. Ct. App. 1991), rehearing denied, — S.W.2d —, 1991 Tenn. App. LEXIS 783 (Tenn. Ct. App. Oct. 1, 1991).

The sixty-day deadline in T.C.A. § 4-5-322(b)(1) is mandatory and jurisdictional; further, failure to adhere to the deadline is fatal for those seeking judicial review of an administrative decision. USW v. Tennessee Air Pollution Control Bd., 3 S.W.3d 468, 1998 Tenn. App. LEXIS 724 (Tenn. Ct. App. 1998).

Nothing in T.C.A. § 4-5-322 mandates that a petition for review name all of the parties to the contested case. As long as a copy of the petition is served upon the parties of record to the contested case, the unambiguous dictates of the statute are satisfied. Schering-Plough Healthcare Prods. v. State Bd. of Equalization, 999 S.W.2d 773, 1999 Tenn. LEXIS 407 (Tenn. 1999).

4. Applicability.

The standard of review in T.C.A. § 4-5-322(h)(5) does not apply to rulemaking proceedings. Tennessee Cable Television Ass'n v. Tennessee Public Service Com., 844 S.W.2d 151, 1992 Tenn. App. LEXIS 583 (Tenn. Ct. App. 1992).

T.C.A. § 4-5-322 governs the court's review of decisions of state agencies, but does not apply to decisions of the board of commissioners of a municipality. Johnson v. Alcoholic Beverage

Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

The decision not to hold a contested case hearing is subject to judicial review just as if a contested case hearing were held, because judicial review would be meaningless if it could be avoided by simply refusing to hold a contested case hearing. Armstrong v. Tennessee Dep't of Veterans Affairs, 959 S.W.2d 595, 1997 Tenn. App. LEXIS 471 (Tenn. Ct. App. 1997), superseded by statute as stated in, Morris v. Correctional Enters., 1997 Tenn. App. LEXIS 740 (Tenn. Ct. App. Oct. 29, 1997).

In order for T.C.A. § 27-9-114(a)(1), regarding decisions about municipal workers' employment, to apply, there had to be: (1) A proceeding before a civil service board; and (2) A decision that affected the employment status of a civil service employee, and absent either of these two prerequisites, T.C.A. § 27-9-114 did not apply, and, if § 27-9-114 did not apply, review was under the common law writ of certiorari, which limited the review to whether the administrative agency had exceeded its authority or had acted illegally, arbitrarily, or fraudulently, but, if § 27-9-114 applied, the Uniform Administrative Procedures Act (UAPA), T.C.A. § 4-5-101 et seq., governed, and, under the UAPA, an administrative agency's decision could be reversed if the court determined that the decision was, among other things, made upon unlawful procedure, under T.C.A. § 4-5-322(h)(3). Tidwell v. City of Memphis, 193 S.W.3d 555, 2006 Tenn. LEXIS 433 (Tenn. 2006).

County's petition for judicial review was subject to the usual standard for judicial review of administrative decisions because the Tennessee State Board of Equalization's denial of a county's motion to set aside an agreed assessment order was not a final ruling on the merits as it did not challenge the merits of the agreed order directly. Anderson Cty. Tenn. v. Tenn. State Bd. of Equalization, — S.W.3d —, 2020 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 533 (Tenn. Sept. 16, 2020).

5. Exclusive Method of Review.

Both the trial court and the appellate court should review factual issues upon a standard of substantial and material evidence. Humana of Tennessee v. Tennessee Health Facilities Com., 551 S.W.2d 664, 1977 Tenn. LEXIS 524 (Tenn. 1977); De Priest v. Puett, 669 S.W.2d 669, 1984 Tenn. App. LEXIS 3394 (Tenn. Ct. App. 1984), cert. denied, 469 U.S. 1034, 105 S. Ct. 505, 83 L. Ed. 2d 397, 1984 U.S. LEXIS 4467 (1984).

The only method of review in a contested case involving an agency within this chapter is by petition for review filed in the chancery court. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

The same standard of review imposed on trial courts by this section prevails on the appellate level; further, a concurrent finding between the agency and the trial court on any issue of fact is conclusive upon the appellate court. CF Industries v. Tennessee Public Service Com., 599 S.W.2d 536, 1980 Tenn. LEXIS 455 (Tenn. 1980).

Notwithstanding the provisions of any other statutes, the proper procedure to challenge the assessment of centrally assessed commercial air carrier property taxes is to pay them under protest pursuant to T.C.A. § 67-5-1329(b) and to file a petition for review with the middle division of the court of appeals pursuant to T.C.A. § 4-5-322(b)(1). Northwest Airlines v. Tennessee State Bd. of Equalization, 861 S.W.2d 232, 1993 Tenn. LEXIS 318 (Tenn. 1993).

The Uniform Administrative Procedures Act provides in pertinent part that a person who is aggrieved by a final decision in a contested case is entitled to judicial review, which is the exclusive method of review. T.C.A. § 4-5-322, also determines the appropriate place of filing for judicial review petitions by nonresidents; provided, that proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute; therefore, an Arkansas resident seeking to proceed informa pauperis for judicial review of denial of Tennessee unemployment compensation benefits properly filed the claim in the chancery court for Davidson County. Patterson v. Tenn. Dep't of Labor & Workforce Dev., 60 S.W.3d 60, 2001 Tenn. LEXIS 781 (Tenn. 2001).

6. Effect of 1986 Amendment.

There is nothing in the 1986 amendment to suggest a termination of jurisdiction of the chancery court over cases filed therein prior to July 1, 1986. On and after July 1, 1986, no petition for review of the designated decisions shall be filed in chancery court, and on and after July 1, 1986, the court shall have no authority to accept such petitions for review. Jones Truck Lines, Inc. v. Eskind, 719 S.W.2d 530, 1986 Tenn. App. LEXIS 3193 (Tenn. Ct. App. 1986).

7. Aggrieved Person.

A county trustee is not an "aggrieved" party so as to entitle him, independently of the county, to maintain a petition to review the final action of the state board of equalization equalizing back-assessments made by the trustee. Roberts v. State Board of Equalization, 557 S.W.2d 502, 1977 Tenn. LEXIS 677 (Tenn. 1977).

A health system agency is not an "aggrieved person" and thus may not seek judicial review of a decision of the health facilities commission granting a certificate of need. East Tennessee Health Improv. Council, Inc. v. Tennessee

Health Facilities Com., 626 S.W.2d 272, 1981 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1981).

Since the plaintiff had adequate notice of administrative proceedings and complained only of possible lack of notice to others, plaintiff was not an "aggrieved party" within the contemplation of T.C.A. § 4-5-322. Tennessee Envtl. Council v. Solid Waste Disposal Control Bd., Div. of Solid Waste Management, 852 S.W.2d 893, 1992 Tenn. App. LEXIS 973 (Tenn. Ct. App. 1992).

8. Notice Requirement.

The purpose of the service requirement in T.C.A. § 4-5-322(b)(2) is to ensure that the proper parties have notice that the court has been asked to review the administrative decision. USW v. Tennessee Air Pollution Control Bd., 3 S.W.3d 468, 1998 Tenn. App. LEXIS 724 (Tenn. Ct. App. 1998).

Reversal of the termination of a county firefighter was appropriate because the county civil service merit board conceded that the hearing notice to the firefighter was deficient from a due process perspective as the board sought to uphold the firefighter's termination on different charges. To the extent that the board upheld the firefighter's termination on grounds other than the charges specifically identified, the termination ran afoul of the firefighter's due process rights. Moss v. Shelby Cty. Civ. Serv. Merit Bd., — S.W.3d —, 2018 Tenn. App. LEXIS 597 (Tenn. Ct. App. Oct. 10, 2018), rev'd, 597 S.W.3d 823, 2020 Tenn. LEXIS 135 (Tenn. Mar. 18, 2020).

9. Time Limit for Petition.

The 60-day time limit for filing a petition for judicial review is a jurisdictional prerequisite to obtain a review of an agency's decision. Bishop v. Tennessee Dep't of Correction, 896 S.W.2d 557, 1994 Tenn. App. LEXIS 727 (Tenn. Ct. App. 1994).

While T.C.A. § 4-5-322 clearly requires that the petition for review be filed within the sixty-day time period, it does not mandate that service occur within the same time period. Schering-Plough Healthcare Prods. v. State Bd. of Equalization, 999 S.W.2d 773, 1999 Tenn. LEXIS 407 (Tenn. 1999).

Because letter by civil service commission represented a final agency order, it became final when it was entered; accordingly, the time for filing a petition for review began to run on the date entered. Davis v. Tennessee Dep't of Empl. Sec., 23 S.W.3d 304, 1999 Tenn. App. LEXIS 814 (Tenn. Ct. App. 1999), review or rehearing denied, 23 S.W.3d 304, 2000 Tenn. App. LEXIS 19 (Tenn. Ct. App. 2000).

The time for seeking judicial review of an agency's decision runs from the date of the entry of the agency's final order, not from a party's receipt of such order. Davis v. Tennessee Dep't of Empl. Sec., 23 S.W.3d 304, 1999 Tenn. App. LEXIS 814 (Tenn. Ct. App. 1999), review or rehearing denied, 23 S.W.3d 304, 2000 Tenn. App. LEXIS 19 (Tenn. Ct. App. 2000).

Prisoner's declaratory judgment action was not time-barred under T.C.A. § 4-5-223(a) in that it was filed after sixty days from the date that the department of corrections in a letter stated that it denied the prisoner's application for a declaratory order because the letter did not constitute a final order under T.C.A. § 4-5-322(b)(1) and T.C.A. § 4-5-314(c); rather, the provisions of T.C.A. § 4-5-225 applied, and because there was no express limitation period under the provisions, the general ten-year limitations period of T.C.A. § 28-3-110 applied. Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

10. Time Limit for Summons.

The right to obtain judicial review of administrative decisions in accordance with T.C.A. § 4-5-322 does not depend on the timely issuance of summons when the defending person in the trial court is also a party to the administrative proceedings. USW v. Tennessee Air Pollution Control Bd., 3 S.W.3d 468, 1998 Tenn. App. LEXIS 724 (Tenn. Ct. App. 1998).

11. Remedies Election.

Here, plaintiff did not seek two irreconcilable remedies since the basis for her petition for judicial review was her allegation that the department of human services had denied her rights afforded under federal law, specifically rights to AFDC benefits. Upon prevailing on that claim, plaintiff had, by definition, established a deprivation of rights under color of state law, the very basis for recovery under 42 U.S.C. § 1983. Furthermore, that success entitled her to attorney fees under 42 U.S.C. § 1988 even had she not plead that entitlement. Wimley v. Rudolph, 931 S.W.2d 513, 1996 Tenn. LEXIS 616 (Tenn. 1996).

When a police officer terminated for unfitness was granted relief in federal court for violations of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act, 29 U.S.C.S. § 701 et seq., in a subsequent action seeking review under T.C.A. § 4-5-322 of a city's administrative decision terminating the officer, the officer was precluded from seeking the remedy of reinstatement because, in the federal court action, the officer willfully and consciously elected and received the remedy of front pay, so, under the election of remedies doctrine, the officer could not also seek reinstatement. Hoback v. City of Chattanooga, 492 S.W.3d 248, 2015 Tenn. App. LEXIS 785 (Tenn. Ct. App. Sept. 28, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 127 (Tenn. Feb. 18, 2016).

12. Procedure for Review.

The intent of T.C.A. § 4-5-322(f) is that an agency be allowed to rely on the arguments as set forth in its order. In re Billing & Collection

Tariffs of South Cent. Bell, 779 S.W.2d 375, 1989 Tenn. App. LEXIS 233 (Tenn. Ct. App. 1989).

There is nothing wrong with an agency citing its own orders when it files a discretionary brief. In re Billing & Collection Tariffs of South Cent. Bell, 779 S.W.2d 375, 1989 Tenn. App. LEXIS 233 (Tenn. Ct. App. 1989).

Proceedings in the chancery court for review of an administrative decision may be initiated without the issuance of a summons. JACO v. Department of Health, Bureau of Medicaid, 950 S.W.2d 350, 1997 Tenn. LEXIS 408 (Tenn. 1997), overruled in part, Schering-Plough Healthcare Prods. v. State Bd. of Equalization, 999 S.W.2d 773, 1999 Tenn. LEXIS 407 (Tenn. 1999).

The Uniform Administrative Procedure Act contains two requirements for judicial review of a final agency decision: first, there is a 60 day deadline for filing the petition of review, and second, the person seeking the review must notify the proper persons. USW v. Tennessee Air Pollution Control Bd., 3 S.W.3d 468, 1998 Tenn. App. LEXIS 724 (Tenn. Ct. App. 1998).

T.C.A. § 4-5-322(b) imposes only two requirements upon the petitioner: first, the petition for review must be filed within 60 days after entry of the final order; and, second, the petitioner must serve copies of the petition upon the agency and all parties of record. Batson East-Land Co. v. Boyd, 4 S.W.3d 185, 1998 Tenn. App. LEXIS 313 (Tenn. Ct. App. 1998).

In case regarding taxation status, plaintiff's failure to separately name the county as a party in the petition for review was not fatal to the petition, as the plaintiff satisfactorily met both requirements of T.C.A. § 4-5-322(b) and the county remained a party to the judicial review proceedings in chancery court. Batson East-Land Co. v. Boyd, 4 S.W.3d 185, 1998 Tenn. App. LEXIS 313 (Tenn. Ct. App. 1998).

Trial court properly dismissed an inmate's petition under T.C.A. §§ 27-8-101 and 27-9-101 for common law writ of certiorari against the Tennessee Department of Correction's (TDOC) and TDOC officials because the inmate failed to seek a declaratory order from TDOC as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-225(b); therefore, the trial court lacked subject matter jurisdiction of the claims against TDOC and TDOC officials. Stewart v. Schofield, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

Where a sheriff department terminated a corrections officer (CO) after he appeared in a video, professing to be a gang member, as the trial court did not sufficiently address the CO's claim that his free speech rights under U.S. Const. amend. I were violated, the judgment reversing the ruling of the Tennessee Civil Service Merit Board affirming the termination was vacated. Parker v. Shelby County Gov't Civil Serv. Merit Bd., 392 S.W.3d 603, 2012 Tenn. App. LEXIS 680 (Tenn. Ct. App. Sept. 27, 2012), appeal denied, Parker v. Shelby County Gov't Civ. Serv. Merit Bd., — S.W.3d —, 2013 Tenn. LEXIS 31 (Tenn. Jan. 9, 2013).

13. Scope of Review.

Review provided in the chancery court is not de novo review, but is confined to the record made before the agency, except in cases of alleged procedural irregularity before the agency not shown in the record. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

Review of a contested case shall be confined to the record, thereby placing upon the agency the burden of a sound, reasoned and judicious approach in the exercise of its jurisdiction and casting upon the petition before the agency the duty and responsibility of bringing forward the entire case in agency hearings with the full realization that there will no longer be bifurcated hearings before the agency and in chancery court. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

The independent judgment rule is not controlling in Tennessee constitutional law; the scope of review articulated in subsection (h) provides adequate standards, within constitutional limits, for judicial determination of the issue of confiscation in rate cases. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

T.C.A. § 4-5-322(h)(5) requires that the trial court review factual issues upon a standard of substantial and material evidence, but this is not a broad, de novo review: it is restricted to the record and the agency finding may not be reversed or modified unless arbitrary or capricious or characterized by an abuse, or clearly unwarranted exercise, of discretion and must stand if supported by substantial and material evidence. CF Industries v. Tennessee Public Service Com., 599 S.W.2d 536, 1980 Tenn. LEXIS 455 (Tenn. 1980).

Consideration on reviews must be given to the statutory recognition of the agency's experience, technical competence and specialized knowledge. CF Industries v. Tennessee Public Service Com., 599 S.W.2d 536, 1980 Tenn. LEXIS 455 (Tenn. 1980).

The correct test for reviewing a commissioner's decision, as well as review of the chancellor's finding in review of commissioner's decision, is whether or not there was substantial or material evidence to support his decision. Goldsmith v. Roberts, 622 S.W.2d 438, 1981 Tenn. App. LEXIS 541 (Tenn. Ct. App. 1981).

Where a state agency acting in a judicial capacity resolves disputed issues of fact properly before it, which the parties have had an adequate opportunity to litigate, federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the state courts. University of Tennessee v. Elliott, 478 U.S. 788, 106 S. Ct. 3220, 92 L. Ed. 2d 635, 1986 U.S. LEXIS 142 (1986).

Under T.C.A. § 4-5-322, the courts are allowed to reverse or modify an agency's decision if the findings, inferences, conclusions or decisions are in violation of constitutional or statutory provisions, or unsupported by evidence that is both substantial and material in light of the entire record. Metropolitan Government of Nashville v. Tennessee Dep't of Education, 771 S.W.2d 427, 1989 Tenn. App. LEXIS 63 (Tenn. Ct. App. 1989).

Where the commissioner of commerce and insurance issued a cease and desist order that purported to restrain only unlawful conduct and was accompanied by notice of opportunity for a full hearing, and there was no allegation or evidence that the commissioner had or was about to seek judicial enforcement of the cease and desist order, the issuance of the cease and desist order by an administrative official without prior notice and hearing was not so extreme and confiscatory as to invoke extraordinary judicial powers to vacate it. Wolcotts Financial Services, Inc. v. McReynolds, 807 S.W.2d 708, 1990 Tenn. App. LEXIS 908 (Tenn. Ct. App. 1990).

Problems occurring subsequent to petitioner's termination had no bearing on the issue of his misconduct prior to termination, and this evidence was neither material nor relevant and the chancellor correctly determined that the introduction of this new evidence was not authorized by this section. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

Because the alcoholic beverage commission (ABC) was without authority to review a municipality's denial of liquor licensee's certificate of compliance, the trial court, in reviewing the decision of the ABC, likewise properly declined to review the actions of municipality's board of commissioners. Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

Judicial review of a decision of the public service commission is limited; the court may, however, reverse the decision if it violates statutory provisions or is in excess of the agency's statutory authority. Deaderick Paging Co. v. Tennessee Pub. Serv. Comm'n, 867 S.W.2d 729, 1993 Tenn. App. LEXIS 517 (Tenn. Ct. App. 1993).

Construction of a statute and application of the law to the facts is a question of law that may be addressed by the courts. Sanifill, Inc. v. Tennessee Solid Waste Disposal Control Bd., 907 S.W.2d 807, 1995 Tenn. LEXIS 607 (Tenn. 1995).

Because a trial court exceeded its authority in ordering reinstatement of a university's educator preparation program; the court's decision had to be vacated in that regard and the case remanded to the court with instructions to remand the case to the Tennessee Board of Education for further consideration of the university's approval status as an educator preparation program. Bethel Univ. v. Tenn. State Bd. of Educ., — S.W.3d —, 2018 Tenn. App. LEXIS 469 (Tenn. Ct. App. Aug. 14, 2018).

Manufacturer sufficiently supported its jurisdictional allegation that it faced the risk of removal from the Directory of Approved Tobacco Product Manufacturers with resultant loss of sales and reputation while it pursued judicial review of a final administrative order; the manufacturer alleged potential injury, judicial review of the final administrative decision would not provide an adequate remedy, and the trial court has subject matter jurisdiction to review the interlocutory appeal of the administrative order denying the manufacturer's motion to compel. Xcaliber Int'l Ltd., LLC v. Tenn. Dep't of Revenue, — S.W.3d —, 2018 Tenn. App. LEXIS 528 (Tenn. Ct. App. Sept. 10, 2018).

14. Standard of Review.

Substantial and material evidence is such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration. Southern R. Co. v. State Bd. of Equalization, 682 S.W.2d 196, 1984 Tenn. LEXIS 891 (Tenn. 1984); De Priest v. Puett, 669 S.W.2d 669, 1984 Tenn. App. LEXIS 3394 (Tenn. Ct. App. 1984), cert. denied, 469 U.S. 1034, 105 S. Ct. 505, 83 L. Ed. 2d 397, 1984 U.S. LEXIS 4467 (1984).

What amounts to substantial evidence requires something less than a preponderance of the evidence, but more than a scintilla or glimmer. Wayne County v. Tennessee Solid Water Disposal Control Bd., 756 S.W.2d 274, 1988 Tenn. App. LEXIS 287 (Tenn. Ct. App. 1988).

The "substantial and material evidence standard" of T.C.A. § 4-5-322(h)(5) requires a searching and careful inquiry and subjects the agency's decision to close scrutiny. National Council on Compensation Ins. v. Gaddis, 786 S.W.2d 240, 1989 Tenn. App. LEXIS 545 (Tenn. Ct. App. 1989).

The general rules governing judicial review of an agency's factual decisions apply with even greater force when the issues require scientific or technical proof; however, even in cases involving scientific or technical evidence, the substantial and material evidence standard in T.C.A. § 4-5-322(h)(5) requires a searching and careful inquiry that subjects the agency's decision to close scrutiny. Willamette Indus., Inc. v.

Tennessee Assessment Appeals Comm'n, 11 S.W.3d 142, 1999 Tenn. App. LEXIS 611 (Tenn. Ct. App. 1999).

The scope of review in the court of appeals is the same as in the trial court, to review findings of fact of the administrative agency upon the standard of substantial and material evidence. Gluck v. Civil Serv. Comm'n, 15 S.W.3d 486, 1999 Tenn. App. LEXIS 719 (Tenn. Ct. App. 1999).

The court of appeal's review of the trial court's decision is essentially a determination of whether or not the trial court properly applied the "substantial and material evidence" standard. Papachristou v. University of Tennessee, 29 S.W.3d 487, 2000 Tenn. App. LEXIS 132 (Tenn. Ct. App. 2000), cert. denied, Papachristou v. Univ. of Tenn., 532 U.S. 977, 121 S. Ct. 1615, 149 L. Ed. 2d 478, 2001 U.S. LEXIS 3004 (2001).

Because the seizure at issue occurred on December 5, 1997 — well after the effective date of T.C.A. § 40-33-213(a) — the trial court erred by employing the "substantial and material evidence" standard in T.C.A § 4-5-322(h)(5). McEwen v. Tenn. Dep't of Safety, 173 S.W.3d 815, 2005 Tenn. App. LEXIS 157 (Tenn. Ct. App. 2005).

Although the employer had proved a violation of the Memphis police department rule 104, the termination of the employee, a police officer, was inappropriate because, although the officer's conduct was inappropriate, the officer's conduct was not so egregious in itself as to have dictated termination; the civil service commission's decision reversed the employer's decision to terminate the employee and the commission's decision was supported by substantial and material evidence under T.C.A. § 4-5-322(h) and T.C.A. § 27-9-114(b)(1). City of Memphis v. Civil Serv. Comm'n, 239 S.W.3d 202, 2007 Tenn. App. LEXIS 129 (Tenn. Ct. App. Mar. 13, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 677 (Tenn. Aug. 13, 2007).

Court was unable to reverse the Tennessee civil service merit board's decision modifying a deputy's punishment from a termination to a suspension without pay because it could not find that the board acted outside its own statutory authority, followed unlawful procedure, acted in an arbitrary or capricious manner, or acted without substantial and material evidence to support its decision under Tenn. Code Ann. § 4-5-322(h); given the deputy's history of 19 years with the department, his acquittal of any criminal wrongdoing, and the lack of witnesses, court held that there was substantial and material evidence to support the modification decision. Shelby County Sheriff's Dep't v. Harris, 337 S.W.3d 840, 2009 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 10, 2009).

To the extent that the chancery court accepted the parties' agreement that the standard of review was a preponderance of the evidence standard, the circuit court erred, but reversal was not required because the substantial and material evidence standard of the statute had been interpreted as requiring less than a preponderance of the evidence. Washington v. City of Memphis Civil Serv. Comm'n, — S.W.3d —, 2021 Tenn. App. LEXIS 48 (Tenn. Ct. App. Feb. 8, 2021).

15. Contested Case.

An audit is not a "contested case" within § 4-5-102, but is the methodical examination of records with intent to verify their accuracy, and hence audit findings are not entitled to judicial review under this section. National Health Corp. v. Snodgrass, 555 S.W.2d 403, 1977 Tenn. LEXIS 630 (Tenn. 1977).

Standard of review of T.C.A. § 4-5-322 is inapplicable if the agency proceeding sought to be reviewed is not a contested case. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Com., 798 S.W.2d 531, 1990 Tenn. App. LEXIS 587 (Tenn. Ct. App. 1990).

Judicial review under T.C.A. § 4-5-322 is not available if the proceeding to be reviewed is not a contested case. Dishmon v. Shelby State Community College, 15 S.W.3d 477, 1999 Tenn. App. LEXIS 685 (Tenn. Ct. App. 1999).

16. Contested Administrative Rulings.

Where appellate court noted that the Tennessee health facilities commission had made its decision regarding petitioner's application for a certificate of need with the presence and participation of a member who had a conflict of interest, the appellate court had authority to remand the matter to the commission for a hearing on the issue without the presence of the conflicted member. Methodist Healthcare-Jackson Hosp. v. Jackson-Madison County Gen. Hosp. Dist., 129 S.W.3d 57, 2003 Tenn. App. LEXIS 369 (Tenn. Ct. App. 2003).

When city employees sought review of the decision of a municipal panel which denied their disability claims, their use of a writ of certiorari, under T.C.A. § 27-8-101 was inapprorpriate because the panel was governed by the Uniform Administrative Procedures Act, § T.C.A. § 4-5-101 et seq., so reveiw was properly sought under T.C.A. § 4-5-322. Tidwell v. City of Memphis, 193 S.W.3d 555, 2006 Tenn. LEXIS 433 (Tenn. 2006).

Where the undisputed facts showed that a former employee, a police officer, made contact with a minor through an Internet chat room and viewed sexually explicit images of her, he was properly terminated for violating Memphis police department policy and procedure rule 104; the facts warranted a result contrary to a commission's reinstatement decision under T.C.A. § 4-5-322(h). City of Memphis v. Civil Serv. Comm'n, 216 S.W.3d 311, 2007 Tenn. LEXIS 143 (Tenn. 2007), rehearing denied, —

S.W.3d —, 2007 Tenn. LEXIS 342 (Tenn. Apr. 2, 2007).

There was no basis for concluding that the sheriff's department could not inquire into the deputy jailer's expunged records and the jailer did not have the right to refrain from disclosing his expunged conviction in his response to sheriff's department lawful inquiry. The County Civil Service Merit Review Board's consideration of the jailer's admission of an expunged conviction was proper; accordingly, the trial court did not err in holding that the Board's decision was based on substantial and material evidence. Macon v. Shelby County Gov't Civ. Serv. Merit Bd., 309 S.W.3d 504, 2009 Tenn. App. LEXIS 643 (Tenn. Ct. App. Sept. 25, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 284 (Tenn. Mar. 15, 2010).

17. Conditional Certificate of Assessment.

Where a certificate of assessment was issued containing a proviso that it would not become effective for 30 days and then only if the state board of equalization did not enter an order requiring review, such certificate was conditional only, and had no effect and was not subject to judicial review under this section. Fulton v. State Board of Equalization, 569 S.W.2d 819, 1978 Tenn. LEXIS 632 (Tenn. 1978).

18. Arbitrary or Capricious Agency Decision.

Where rates set by the public service commission have passed beyond arbitrariness or capriciousness or are an abuse or unwarranted exercise of discretion, a judicial determination of confiscation may be made and relief provided. United Inter-Mountain Tel. Co. v. Public Service Com., 555 S.W.2d 389, 1977 Tenn. LEXIS 627 (Tenn. 1977); Public Service Com. v. General Tel. Co., 555 S.W.2d 395, 1977 Tenn. LEXIS 629 (Tenn. 1977).

As a city established a reasonable basis for its termination of three city police officers for purchasing stolen TVs under suspicious circumstances, the city civil service commission's decision to reverse the termination was arbitrary because it was unsupported by substantial and material evidence; the officers placed their honesty and common sense into question and either form of impairment in a police officer worked to undermine the reputation and standing of those entrusted with exercising the police power of Tennessee. City of Memphis v. Civil Serv. Comm'n of Memphis, 238 S.W.3d 238, 2007 Tenn. App. LEXIS 192 (Tenn. Ct. App. Apr. 4, 2007).

Police officer's termination of employment was improper because the expert's testimony on which the Civil Service Commission relied was incongruent with the undisputed facts in the record; the facts in the record fairly detracted from the weight accorded by the Commission to the document examiner's opinion testimony. Thus, the Commission's decision was not supported by substantial and material evidence and was arbitrary and capricious under T.C.A. § 4-5-322(h)(4). Mitchell v. Madison County Sheriff's Dep't, 325 S.W.3d 603, 2010 Tenn. App. LEXIS 238 (Tenn. Ct. App. Mar. 31, 2010), rehearing denied, 325 S.W.3d 603, 2010 Tenn. App. LEXIS 819 (Tenn. Ct. App. 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 951 (Tenn. Oct. 12, 2010).

It was arbitrary and capricious for Tennessee Solid Waste Disposal Control Board to dismiss a diversion option simply on the basis of possible delay because any delay occasioned by gauging a property owner's willingness to pay for the costs of diversion would be justified by future abatement of leachate discharges. Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015), rev'd, Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. May 9, 2016).

Tennessee Solid Waste Disposal Control Board's decision to dismiss a diversion option without fully considering its viability was arbitrary and capricious because the Board failed to fully consider the range of remedial options that were available and discussed at the hearing. Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015), rev'd, Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. May 9, 2016).

Trial court erred in reversing TennCare's decision that an enrollee could receive necessary care for less cost at a hospital because the court applied the substantial and material standard to the enrollee's proof instead of the agency's decision, leading to an erroneous decision that the hospital could not meet the enrollee's needs, as (1) the enrollee's physician's contrary opinion was not entitled to controlling weight, since no objective medical evidence supported the opinion and the opinion significantly differed from TennCare's, (2) substantial and material evidence supported the decision, and the decision was not arbitrary and capricious, as the enrollee did not prove the hospital was not adequate to meet the enrollee's needs, and it was not a clear error in judgment for an administrative law judge to find the hospital could provide adequate care at a lower cost. Wade v. Tenn. Dep't of Fin. & Admin., 487 S.W.3d 123, 2015 Tenn. App. LEXIS 890 (Tenn. Ct. App. Nov. 3, 2015), review or rehearing denied, — S.W.3d —, 2016 Tenn. LEXIS 161 (Tenn. Feb. 18, 2016).

In a case where a landfill was discharging contaminants into a creek, the Tennessee Court of Appeals did not properly apply the narrow standard of review required for review of a cleanup agreement; a decision of the Tennessee Solid Waste Disposal Control Board was not arbitrary or capricious because it was based on

reasoning and the exercise of judgment and gave fair consideration to a diversion option. The Court of Appeals misapplied the arbitrary and capricious standard and instead substituted its judgment for that of the Board; the search for a solution to the problem was not within the province of the Court of Appeals. Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. May 9, 2016).

Board did not reject or modify the findings of the administrative law judge (ALJ); instead, the Board rejected the ALJ's recommendation and voted to uphold the management decision to terminate the worker. Because the Board disagreed with the ALJ, the Board's decision was subject to closer judicial scrutiny, and although the Board was entitled to make its own decision, the Board should not have ignored the ALJ's findings of fact. The Board's decision to reject the recommendation of the ALJ was arbitrary and capricious. Elec. Emles. Civ. Serv. & Pension Bd. of the Metro. Gov't v. Mansell, — S.W.3d —, 2020 Tenn. App. LEXIS 49 (Tenn. Ct. App. Feb. 4, 2020), appeal denied, Elec. Empls. Civ. Serv. & Pension Bd. v. Mansell, — S.W.3d —, 2020 Tenn. LEXIS 291 (Tenn. Aug. 5, 2020).

Trial court properly reversed a civil service commission's decision to reinstate a police officer where the commission and court identified the appropriate program provisions that applied to the disciplinary proceeding, the expert testimony supported a finding that the supplement the officer consumed was an immediate precursor to a controlled substance, the police officer tested positive for a controlled substance, and that positive drug test constituted a violation of the departmental policy that merited termination. Thus, the commission rendered an arbitrary and capricious decision by substituting its judgment for the rules and policies of the police department. Metro. Gov't of Nashville & Davidson Cty. v. Civil Serv. Comm'n of the Metro. Gov't of Nashville & Davidson Cty., — S.W.3d —, 2020 Tenn. App. LEXIS 571 (Tenn. Ct. App. Dec. 16, 2020).

19. Record.

By not taking steps to comply with the requirements of this section that the original or certified copy of the entire record be transmitted to the reviewing court, the appellant cannot assert that the trial court erred by considering a less than complete record. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

The proper procedure for supplying the lost portions of the record would have been to offer summaries of the video tape, photographs and other exhibits by sworn affidavits, not by making a motion for summary judgment or remand of the case for a new administrative hearing. Goins v. University of Tennessee Memorial Research Center & Hosp., 821 S.W.2d 942, 1991 Tenn. App. LEXIS 510 (Tenn. Ct. App. 1991).

Since under T.C.A. § 4-5-322(g) reviewing courts are confined to the administrative record when considering whether an agency's action is supported by substantial and material evidence, it is critical for that record to contain expert testimony supporting the agency's decision, rather than requiring the court to read the minds of the members of the administrative body. Martin v. Sizemore, 78 S.W.3d 249, 2001 Tenn. App. LEXIS 616 (Tenn. Ct. App. 2001).

Although a county civil service merit board was required to transmit its final decision as part of the administrative record, there was no question that the board rendered a final decision subject to appellate review, and that the lower court had before it all relevant information pertaining to that decision; the court of appeals therefore had subject matter jurisdiction over the matter, and the dispute, which was a narrow one of pure law, could be resolved without a remand. County of Shelby v. Tompkins, 241 S.W.3d 500, 2007 Tenn. App. LEXIS 433 (Tenn. Ct. App. July 12, 2007), appeal denied, — S.W.3d —, 2007 Tenn. LEXIS 1071 (Tenn. Nov. 19, 2007).

20. Board's Findings Required in Record.

Where an administrative board renders a final decision after a full hearing but fails to include in its decision findings of fact, conclusions of law and reasons for its decision pursuant to § 4-5-314, findings made by the chancellor may not be substituted for those to be made by the board. Levy v. State Board of Examiners for Speech Pathology & Audiology, 553 S.W.2d 909, 1977 Tenn. LEXIS 594 (Tenn. 1977).

Although substantial evidence supported the Tennessee Civil Service Merit Board's finding that a corrections officer's (CO's) appearance in a video professing to be a gang member violated the sheriff's department's rules, as the Board did not address the CO's claim that his free speech rights were violated by his termination, the case was remanded to the Board to making findings on that issue. Parker v. Shelby County Gov't Civil Serv. Merit Bd., 392 S.W.3d 603, 2012 Tenn. App. LEXIS 680 (Tenn. Ct. App. Sept. 27, 2012), appeal denied, Parker v. Shelby County Gov't Civ. Serv. Merit Bd., — S.W.3d —, 2013 Tenn. LEXIS 31 (Tenn. Jan. 9, 2013).

21. Harmless Error.

If an administrative agency commits harmless error, the reviewing court cannot use it as a proper basis for reversal of the agency's decision. Hoover v. State Board of Equalization, 579 S.W.2d 192, 1978 Tenn. App. LEXIS 338 (Tenn. Ct. App. 1978).

Although civil service commission improperly expanded its record by including newspaper articles in the record that contradicted the police officer's representation that he had a spotless record, as the information was ob-

tained by one of the commission's members, the error was harmless as many members of the civil service commission stated that they did not consider the information in making their decision, and there was substantial evidence to support the termination without consideration of the expanded record. Lien v. Metro. Gov't of Nashville , 117 S.W.3d 753, 2003 Tenn. App. LEXIS 186 (Tenn. Ct. App. 2003), appeal denied, Lien v. Metro. Gov't of Nashville & Davidson County, — S.W.3d —, 2003 Tenn. LEXIS 908 (Tenn. Oct. 6, 2003).

22. Agency Decision Upheld.

Agency decision was upheld. Powell Tel. Co. v. Tennessee Public Service Com., 660 S.W.2d 44, 1983 Tenn. LEXIS 738 (Tenn. 1983) (telephone rate increase); Daley v. University of Tenn., 880 S.W.2d 693, 1994 Tenn. App. LEXIS 142 (Tenn. Ct. App. 1994).

Under the narrow scope of review set out in T.C.A. § 4-5-322, the trial court correctly upheld the commission's decision to demote police officer in light of substantial and and material evidence that officer left his duty station without permission, failed to follow the chain of command and made derogatory remarks to his subordinates concerning high ranking officers in the police department. Gluck v. Civil Serv. Comm'n, 15 S.W.3d 486, 1999 Tenn. App. LEXIS 719 (Tenn. Ct. App. 1999).

There was substantial and material evidence from which the university chancellor could find that law school student violated the honor code. Papachristou v. University of Tennessee, 29 S.W.3d 487, 2000 Tenn. App. LEXIS 132 (Tenn. Ct. App. 2000), cert. denied, Papachristou v. Univ. of Tenn., 532 U.S. 977, 121 S. Ct. 1615, 149 L. Ed. 2d 478, 2001 U.S. LEXIS 3004 (2001).

Substantial evidence existed for the ruling by the department of personnel (now department of human resources) commissioner as the department of agriculture complied with former T.C.A. § 8-30-101, and a sound basis existed for terminating the positions of the more senior personnel as opposed to lower ranking positions. Bobbitt v. Shell, 115 S.W.3d 506, 2003 Tenn. App. LEXIS 93 (Tenn. Ct. App. 2003), review or rehearing denied, — S.W.3d —, 2003 Tenn. LEXIS 538 (Tenn. May 27, 2003).

Decision of the Tennessee board of registration in podiatry that upheld its agreement entered into with a podiatrist was upheld by the chancery court and by the court of appeals because there was evidence to show that the agreement was knowing and voluntarily made to settle numerous charges asserted against the podiatrist and the provision in the agreement that precluded the podiatrist from reapplying for a license to practice in the state was within the board's authority. Bacardi v. Tenn. Bd. of Registration in Podiatry, 124 S.W.3d 553, 2003 Tenn. App. LEXIS 402 (Tenn. Ct. App. 2003), appeal denied, Bacardi v. Tn. Bd. of Registration in Podiatry, — S.W.3d —, 2003 Tenn. LEXIS 872 (Tenn. 2003).

Record contained substantial and material evidence to support the civil service commission's conclusion that the reorganization of the police department complied with the civil service commission Rule 3.11 because the duties performed by the former assistant chiefs of police were not the same as the duties performed currently by the deputy chiefs of police; the reporting relationships were clearly different and the duties of the deputy chief of police for field operations were far broader than the duties and responsibilities of the former assistant chief of police for the west patrol bureau. Miller v. Civil Serv. Comm'n of the Metro. Gov't of Nashville & Davidson County, 271 S.W.3d 659, 2008 Tenn. App. LEXIS 29 (Tenn. Ct. App. Jan. 22, 2008), appeal denied, Miller v. Civil Serv. Comm'n of the Metro Gov't of Nashville & Davidson County, — S.W.3d —, 2008 Tenn. LEXIS 440 (Tenn. June 23, 2008).

Former assistant chief of police failed to provide either a factual or legal basis to undermine the chief of police's decision to utilize temporary assignment positions in his reorganization plan, as the chief's decision was approved by the director of human resources and the civil service commission. Miller v. Civil Serv. Comm'n of the Metro. Gov't of Nashville & Davidson County, 271 S.W.3d 659, 2008 Tenn. App. LEXIS 29 (Tenn. Ct. App. Jan. 22, 2008), appeal denied, Miller v. Civil Serv. Comm'n of the Metro Gov't of Nashville & Davidson County, — S.W.3d —, 2008 Tenn. LEXIS 440 (Tenn. June 23, 2008).

Although a police officer identified evidence that fairly detracted from the weight of the evidence supporting his termination, there was substantial evidence supporting a civil service commission's decision to fire him after a mental patient suffering from self-inflicted wounds died from a heart attack during a baton beating; a deputy chief testified that her review of the officer's entire disciplinary history and personnel file militated in favor of termination, and a training sergeant testified that officers were not taught to use a baton as a restraining device. The patient no longer had a knife, he did not directly confront the officers involving, and the patient was beaten and held down with batons after he tripped and was lying face down in the street. Penny v. City of Memphis, 276 S.W.3d 410, 2008 Tenn. App. LEXIS 137 (Tenn. Ct. App. Mar. 12, 2008), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 716 (Tenn. Sept. 29, 2008)

Revocation of the teacher's license was proper, because the Tennessee Department of Children's Services (DCS) classified the teacher as an indicated perpetrator of child physical abuse, and the teacher's classification as an indicated perpetrator compelled the Tennessee

Board of Education to revoke the teacher's license, when the DCS regulations mandated that if an individual received an indicated perpetrator classification, the licensing authority must immediately take action to make certain that the individual had no access to or contact with any child in their care. Yokley v. State Bd. of Educ., 305 S.W.3d 523, 2009 Tenn. App. LEXIS 337 (Tenn. Ct. App. May 19, 2009), appeal denied, — S.W.3d —, 2009 Tenn. LEXIS 755 (Tenn. Nov. 23, 2009).

Decision of the Tennessee Peace Officer Standards and Training Commission denying a sheriff's request for certification, based on the sheriff's recruit training 33 years earlier, was upheld because: (1) T.C.A. § 8-8-102(a)(9)(A), requiring the sheriff to obtain certification was not an unconstitutional delegation of legislative authority; and (2) The agency's rules said an officer out of law enforcement for more than ten years had to go through recruit training again. Boyce v. Tenn. Peace Officer Stds. & Training Comm'n, 354 S.W.3d 737, 2011 Tenn. App. LEXIS 55 (Tenn. Ct. App. Feb. 10, 2011), appeal denied, Boyce v. Tenn. Peace Officers Stds. & Training Comm'n, — S.W.3d —, 2011 Tenn. LEXIS 568 (Tenn. May 25, 2011).

City council's decision to terminate a police officer was upheld, when the officer was terminated for improperly stopping individuals, failing to comply with procedure, and untruthfulness, because res judicata did not bar the termination, based on criminal prosecutions of the individuals and the officer's acquittal of related criminal charges, as the prior cases were criminal cases against the officer and the victims of the conduct for which the officer was fired, so: (1) the cases did not involve the same parties or the parties' privies; nor (2) did the cases involve the same cause of action; and (3) the officer's criminal case used a different burden of proof. Goodine v. City of Chattanooga, 376 S.W.3d 725, 2011 Tenn. App. LEXIS 673 (Tenn. Ct. App. Dec. 19, 2011), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 320 (Tenn. May 16, 2012).

Substantial evidence supported the Tennessee Department of Health's decision to place a nurse assistant's name on the Abuse Registry, T.C.A. § 68-11-1003(a)(1), for committing an act of abuse on a seventy-year-old female nursing home resident even though the resident never gave a specific time and date for the abuse because the resident identified the assistant as the perpetrator, stated the abuse had occurred more than once, and the abuse had occurred at night; the evidence showed the assistant was the African-American male nurse assistant most likely to be on the resident's floor at night. Riley v. Dreyzehner, 398 S.W.3d 182, 2012 Tenn. App. LEXIS 731 (Tenn. Ct. App. Oct. 19, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 180 (Tenn. Feb. 15, 2013).

Evidence did not preponderate against the State Board of Equalization's finding that a bookstore/cafe area contained in a church family life center facility did not qualify that space for the tax exemption provided by the former T.C.A. § 67-5-212 because the bookstore/cafe area was nothing short of a retail establishment housed within the walls of the center, complete with paid staff, inventory control, retail pricing, and a wide array of merchandise for sale to the general public. Christ Church Pentecostal v. Tenn. State Bd. of Equalization, 428 S.W.3d 800, 2013 Tenn. App. LEXIS 197 (Tenn. Ct. App. Mar. 21, 2013), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 742 (Tenn. Sept. 10, 2013).

State Board of Equalization's partial denial of a church's application for exemption for areas used for retail/commercial uses did not violate Tennessee's Religious Freedom Restoration Act, T.C.A. § 4-1-407, because the tax exemption statutes did not substantially burden any cognizable religious belief and did not prohibit or coerce any act contrary to religious belief; the State had a compelling interest in ensuring a fair distribution of the tax burden. Christ Church Pentecostal v. Tenn. State Bd. of Equalization, 428 S.W.3d 800, 2013 Tenn. App. LEXIS 197 (Tenn. Ct. App. Mar. 21, 2013), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 742 (Tenn. Sept. 10, 2013).

Evidence did not preponderate against the State Board of Equalization's finding that a fee-based membership fitness center and gymnasium area contained in a church family life center facility qualified for a fifty percent pro rata tax exemption provided by the former T.C.A. § 67-5-212 because, in addition to operating in part as a commercial enterprise, the church used the gymnasium for a faith-based youth basketball program, youth fellowship, and other church-related activities. Christ Church Pentecostal v. Tenn. State Bd. of Equalization, 428 S.W.3d 800, 2013 Tenn. App. LEXIS 197 (Tenn. Ct. App. Mar. 21, 2013), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 742 (Tenn. Sept. 10, 2013).

Tennessee Solid Waste Disposal Control Board did not abuse its discretion in adopting an order that assessed penalties against a limited liability company (LLC) with remediation efforts in mind because the State's focus on preserving the LLC's resources for remediation of the site was a reasonable one; the Board was not without justification when it made the civil penalties provided for in the consent order contingent upon the LLC's failure to comply with the ordered remediation activities. Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015), rev'd, Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. May 9, 2016).

Approval by the Tennessee Solid Waste Disposal Control Board of an amended consent order detailing necessary actions to be taken by a landfill permit holder to address the pollution issues of a creek and a lake was appropriate because the Board had the authority to approve the plan in the order to reduce the contamination stemming from a permit holder's landfill by diverting storm water away from the site and subsequently removing the waste from the landfill without the requirement of a National Pollutant Discharge Elimination System permit. Starlink Logistics, Inc. v. ACC, LCC, — S.W.3d —, 2018 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 31, 2018), appeal denied, Starlink Logistics Inc. v. ACC, LLC, — S.W.3d —, 2018 Tenn. LEXIS 311 (Tenn. June 7, 2018), cert. denied, StarLink Logistics, Inc. v. ACC, LLC, 206 L. Ed. 2d 917, 140 S. Ct. 2738, — U.S. —, 2020 U.S. LEXIS 2593 (U.S. May 4, 2020).

Decision of the trial court upholding the employee's termination was supported by substantial evidence because a reasonable person could have concluded that the employee's continued refusal to cooperate with or obey the directives of the lieutenant in connection with the final ride along session was insubordination and exhibited a willful failure to follow lawful instructions. Armstrong v. Shelby Cty. Juvenile Court, — S.W.3d —, 2018 Tenn. App. LEXIS 675 (Tenn. Ct. App. Nov. 20, 2018).

Substantial and material evidence supported the Electric Employees' Civil Service and Pension Board of the Metropolitan Government of Nashville and Davidson County's decision to terminate the employee's employment because he was not truthful about the reason he left a prior job, as the employee conceded at the hearing before the administrative law judge that if he had not had the at-fault accident, his prior employment would not have ended when it did, but at the time he was hired he told the employer that he left his prior job due to policy and pay changes. Mitchell v. Elec. Emples. Civ. Serv. & Pension Bd. of the Metro. Gov't, — S.W.3d —, 2019 Tenn. App. LEXIS 19 (Tenn. Ct. App. Jan. 16, 2019).

Metropolitan Government of Nashville Civil Service Commission's decision to adopt the Metropolitan Nashville Police Department's initial discipline of demotion and to uphold a police officer's suspension was neither arbitrary nor capricious because the officer was demoted from sergeant on the basis that his superiors could no longer trust his decision-making capabilities or his ability to properly advise the officers under his supervision. Davis v. Civil Serv. Comm'n of the Metro. Gov't, — S.W.3d —, 2019 Tenn. App. LEXIS 250 (Tenn. Ct. App. May 21, 2019).

Conclusion that a police officer violated Metropolitan Nashville Police Department policy was not arbitrary or capricious and was supported by substantial and material evidence because the officer knowingly deprived a bonding agent of his right to conduct lawful business without improper interference from the police; the officer's telephone call to the agent caused him to not bond out an arrestee, and it was the officer's intention to deprive the arrestee of his right to bail. Davis v. Civil Serv. Comm'n of the Metro. Gov't, — S.W.3d —, 2019 Tenn. App. LEXIS 250 (Tenn. Ct. App. May 21, 2019).

Record contained substantial and material evidence to support the Metropolitan Government of Nashville Civil Service Commission's decision that a police officer could be held responsible for violating Metropolitan Nashville Police Department (MNPD) policy while serving on a task force because MNPD officers testified that even when an officer was assigned to a task force he or she was still a MNPD officer and was still subject to MNPD rules and regulations. Davis v. Civil Serv. Comm'n of the Metro. Gov't, — S.W.3d —, 2019 Tenn. App. LEXIS 250 (Tenn. Ct. App. May 21, 2019).

Metropolitan Government of Nashville Civil Service Commission's conclusion that a police officer violated Metropolitan Nashville Police Department policy was not arbitrary or capricious and was supported by substantial and material evidence because the officer engaged in conduct which constituted an offense under Tennessee law; the officer assumed a false identity or pretended to be a representative of Immigration and Customs Enforcement with the intent to injure or defraud a bonding agent. Davis v. Civil Serv. Comm'n of the Metro. Gov't, — S.W.3d —, 2019 Tenn. App. LEXIS 250 (Tenn. Ct. App. May 21, 2019).

Denial of medical licensure in Tennessee to an applicant was not inappropriate because the decision by the Tennessee Board of Medical Examiners that the applicant's long absence from direct patient care necessitated a formal assessment before the applicant could engage in the practice of emergency medicine in Tennessee was not unclear, arbitrary and capricious, or unsupported by substantial and material evidence. Perez v. Tenn. Bd. of Med. Examiners, — S.W.3d —, 2019 Tenn. App. LEXIS 336 (Tenn. Ct. App. July 3, 2019).

Police department's termination of an officer's employment was appropriate because substantial evidence supported the administrative law judge's finding that the officer violated police department policies by falsely arresting an individual and by operating a police vehicle recklessly in response to emergency calls. These violations warranted the termination of the officer's employment because, despite previous disciplinary actions and opportunities for improvement, the officer continued to exhibit reckless and dangerous behavior. Campbell v. City of Chattanooga, — S.W.3d —, 2019 Tenn. App. LEXIS 541 (Tenn. Ct. App. Nov. 6, 2019).

County was not entitled to set aside an agreed assessment order because the county

failed to show by clear and convincing evidence that the county assessor did not approve of the agreed order or give a Tennessee Division of Property attorney permission to sign the order on behalf of the taxpayer's counsel and the assessor. The judge found that the assessor was aware of the pending settlement, engaged in negotiations, received the agreed order after it was entered, and made no written objection until after the settlement was certified as final. Anderson Cty. Tenn. v. Tenn. State Bd. of Equalization, — S.W.3d —, 2020 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 533 (Tenn. Sept. 16, 2020).

Board of Appeals of the Tennessee Department of Human Resources did not err in modifying the termination of a preferred-service employee with the Tennessee Department of Children's Services to suspension without pay and in reinstating the employee with back pay after the employee accessed a case file involving a sibling and sent an e-mail to the case manager and the supervisor, with a copy to the sibling, because the Board acted within its authority and found that the employee's act did not constitute an unauthorized disclosure of information. Tenn. Dep't of Children's Servs. v. James, — S.W.3d —, 2020 Tenn. App. LEXIS 121 (Tenn. Ct. App. Mar. 25, 2020).

Co-owner of a mobile home lacked standing to contest the forfeiture of currency that was properly seized as proceeds from drug trafficking during a search of the mobile home, which was leased to the co-owner's adult child, because the co-owner failed to demonstrate an ownership interest in the currency. The trial court's application of an incorrect standard of review was harmless error as, under the correct standard of review, the evidence preponderated in favor of the administrative law judge's determination that the co-owner lacked standing. Tubbs v. Long, 610 S.W.3d 1, 2020 Tenn. App. LEXIS 198 (Tenn. Ct. App. Apr. 28, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 550 (Tenn. Sept. 16, 2020).

In a case in which appellant filed a grievance with the Electric Employees' Civil Service and Pension Board after the Nashville Electric Service revoked his unauthorized pay raise, the appellate court discerned no error in the trial court's order affirming the Board's decision against appellant. A manager acted outside the scope of his authority when he unilaterally implemented the pay raise for appellant without obtaining the necessary approvals of such raise. Ramos v. Elec. Emples. Civ. Serv. & Pension Bd. of the Metro. Gov't of Nashville & Davidson Cty., — S.W.3d —, 2020 Tenn. App. LEXIS 595 (Tenn. Ct. App. Dec. 23, 2020).

Decision of the hearing officer as to attempted manipulation and unreasonable prevention of an assessment was supported by substantial and material evidence where intradepartmental review was not divorced from consideration of the manipulation issue, the hearing officer limited the child care center operator's pursuit of a reasonableness line of inquiry for the previous year because the specific proof the operator wanted to submit was deemed irrelevant, the officer exhibited a willingness to hea any relevant evidence one the reasonableness issue, and the testimony and documentary evidence showed that the operator had attempted to manipulate the assessment. Walker v. Tenn. Dep't of Human Servs., — S.W.3d —, 2021 Tenn. App. LEXIS 9 (Tenn. Ct. App. Jan. 13, 2021).

23. Agency Decision Reversed.

Tennessee Department of Labor and Workplace Development should not have assessed penalties against an employer for violations of T.C.A. § 50-5-111(1), (4), based on the employer's failure to provide records within an hour; thus, the decision of the Department and lower court had to be reversed. Publix Super Mkts., Inc. v. Tenn. Dep't of Labor & Workforce Dev., 402 S.W.3d 218, 2012 Tenn. App. LEXIS 799 (Tenn. Ct. App. Aug. 24, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 284 (Tenn. Mar. 5, 2013).

Substantial evidence did not support the state employees' appeals board's (board) finding that a preferred state employee committed negligence by not filing a report because the board found the employee did not violate a rule requiring the filing of the report. Tenn. Dep't of Corr. v. Pressley, — S.W.3d —, 2016 Tenn. App. LEXIS 258 (Tenn. Ct. App. Apr. 14, 2016), rev'd, 528 S.W.3d 506, 2017 Tenn. LEXIS 554 (Tenn. Sept. 14, 2017).

Trial court properly reversed the Drug Enforcement Administration (DEA) charges the Tennessee Board of Medical Examiners' Committee on Physician Assistants filed against a physician assistant (PA) because to the extent the PA inadvertently prescribed controlled substances without the appropriate delegated authority due to her supervising physician not possessing a DEA registration, the error, if any, would be with the supervising physician. Tenn. Dep't of Health v. Sparks, — S.W.3d —, 2019 Tenn. App. LEXIS 439 (Tenn. Ct. App. Sept. 6, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 30 (Tenn. Jan. 15, 2020).

Trial court properly reversed the determination of the Department of Health that a physician assistant (PA) failed to register with the Controlled Substances Monitoring Database (CSMD) and to check the CSMD before prescribing controlled substances because the record did not contain substantial and material evidence to support a finding the PA had notice that she was required to register with the CSMD and check with the CSMD before prescribing controlled substances. Tenn. Dep't of Health v. Sparks, — S.W.3d —, 2019 Tenn. App.

LEXIS 439 (Tenn. Ct. App. Sept. 6, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 30 (Tenn. Jan. 15, 2020).

Trial court properly reversed the Drug Enforcement Administration (DEA) charges filed against a physician assistant (PA) because the interpretation of the Physician Assistants Act by the Department of Health was contrary to law and improperly placed the duty on the PA to determine whether a supervising physician was in compliance with an unwritten requirement that the physician be registered with the DEA to be able to supervise a physician assistant who prescribed controlled substances. Tenn. Dep't of Health v. Sparks, — S.W.3d —, 2019 Tenn. App. LEXIS 439 (Tenn. Ct. App. Sept. 6, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 30 (Tenn. Jan. 15, 2020).

State claimed that extrinsic information introduced by a panel member during board deliberations prejudiced the State, as the specific documents referred to by the board member had not been introduced as evidence and were not admissible to prove the standard of care; the court affirmed the decision of the trial court that reversed and remanded the board's final order, both because it was made upon unlawful procedure and was characterized by an abuse of discretion or clearly unwarranted exercise of discretion. Tenn. Dep't of Health v. Collins, — S.W.3d —, 2020 Tenn. App. LEXIS 532 (Tenn. Ct. App. Nov. 25, 2020).

24. Jurisdiction.

Nothing in the law required the party to concede the futility of its claims without discovery in order to invoke jurisdiction under T.C.A. § 4-5-322(a)(1). Xcaliber Int'l Ltd., LLC v. Tenn. Dep't of Revenue, — S.W.3d —, 2018 Tenn. App. LEXIS 528 (Tenn. Ct. App. Sept. 10, 2018).

Chancery court erred in awarding the claimants' request for attorney's fees because it lacked subject matter jurisdiction over the petition where more than 60 days had passed from the day the order granting the motion to dismiss became final, no stay was granted, the initial order did not specify a later date for finality, and, while the administrative law judge's failure to address the claimants' requested an award of attorney's fees constituted an error arising from oversight or omission, the ALJ's entry of the corrected order did not commence a new 60-day time period for the filing of a petition for judicial review. Berlanga v. Tenn. Dep't of Safety & Homeland Sec., — S.W.3d —, 2019 Tenn. App. LEXIS 48 (Tenn. Ct. App. Jan. 29, 2019).

Dismissal of petitions for judicial review was appropriate because the chancery court lacked subject matter jurisdiction over the petitions by property owners and attorneys who represented property owners in forfeiture proceedings as one petition was untimely filed, the petitions were barred by res judicata, some of the forfeiture cases were still pending, and the petitioners lacked standing to pursue judicial review on behalf of classes of previous claimants to seized property. Heredia v. Gibbons, — S.W.3d —, 2019 Tenn. App. LEXIS 351 (Tenn. Ct. App. July 17, 2019), appeal denied, — S.W.3d —, 2019 Tenn. LEXIS 576 (Tenn. Dec. 4, 2019).

Trial court did not err in holding that it was deprived of jurisdiction to consider any effort to reclaim an arrestee's forfeited property because he did not attempt to file a claim in the applicable agency and did not seek judicial review of the agency's decision within sixty days; the arrestee failed to seek judicial review within sixty days of the issuance of any of the administrative forfeiture orders. Augustin v. Bradley Cty. Sheriff's Office, 598 S.W.3d 220, 2019 Tenn. App. LEXIS 481 (Tenn. Ct. App. Oct. 2, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 125 (Tenn. Feb. 19, 2020).

25. Remand.

Because the city's policy requiring an autopsy usurped the statute by placing a greater burden on the claimant, the policy was in conflict with the statute and was unenforceable; the trial court's decision to remand the case to the administrative law judge to try the case on its merits was not an abuse of discretion or otherwise erroneous. The trial court had such discretion under the Uniform Administrative Procedures Act. Pryor v. City of Memphis, — S.W.3d —, 2020 Tenn. App. LEXIS 41 (Tenn. Ct. App. Jan. 31, 2020).

4-5-323. Appeals to court of appeals.

(a) An aggrieved party may obtain a review of any final judgment of the chancery court under this chapter by appeal to the court of appeals of Tennessee.

(b) The record certified to the chancery court and the record in the chancery court shall constitute the record in an appeal. Evidence taken in court pursuant to § 4-5-322(g) shall become a part of the record.

(c) The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

History.

Acts 1974, ch. 725, § 18; 1977, ch. 298, § 1; T.C.A., § 4-524; Acts 1981, ch. 449, § 2; T.C.A., § 4-5-118; Acts 1982, ch. 874, § 64.

Textbooks.

Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 268; 5 Tenn. Juris., Carriers, § 58; 21 Tenn. Juris., Public Utility Commission, § 3.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Jurisdiction.
3. Scope of Review.
4. Standard of Review.
5. Record.
6. Objections to Record.

1. Applicability.

In termination of tenured state university faculty proceedings, T.C.A. §§ 49-8-302 — 49-8-304 apply, rather than the more general provisions of the Uniform Administrative Procedures Act. Frye v. Memphis State University, 671 S.W.2d 467, 1984 Tenn. LEXIS 927 (Tenn. 1984).

2. Jurisdiction.

T.C.A. § 4-5-323 vests appellate jurisdiction of cases brought under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 in the court of appeals, not the court of criminal appeals; therefore, court of criminal appeals did not have jurisdiction over inmate's appeal from chancery court, regarding parole eligibility, regardless of transfer under T.C.A. § 16-5-108(a)(2). Slagle v. Reynolds, 845 S.W.2d 167, 1992 Tenn. LEXIS 701 (Tenn. 1992).

3. Scope of Review.

Review of a decision of a trial judge is not broad, or de novo, when his action, initially, is confined to a narrow and statutorily prescribed review of the record made before the administrative agency. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

A chancery court order holding that the board of dentistry was not acting in violation of any constitutional provisions or exceeding its statutory authority when it issued a declaratory order that T.C.A. § 63-1-134 applied to unlicensed persons was a final judgment and, absent an appeal under the procedure specified in this section, constituted a final adjudication of the case. Richardson v. Board of Dentistry, 913 S.W.2d 446, 1995 Tenn. LEXIS 788 (Tenn. 1995).

4. Standard of Review.

Both the trial court and the appellate court should review factual issues upon a standard of substantial and material evidence. Humana of Tennessee v. Tennessee Health Facilities Com., 551 S.W.2d 664, 1977 Tenn. LEXIS 524 (Tenn. 1977).

5. Record.

Once the agency transmits the record to the reviewing or trial court, it has no further duties with respect to the record and on appeal to the court of appeals the appellant has the sole duty to prepare and present the record in its proper form. Memphis Mobile Tel., Inc. v. Atkins, 584 S.W.2d 798, 1979 Tenn. App. LEXIS 318 (Tenn. Ct. App. 1979).

6. Objections to Record.

If appellant has any question concerning the transcript of proceeding before the commission on whether the entire record was before the chancellor, the time to have raised such objection was in the chancery court and not in the court of appeals. Memphis Mobile Tel., Inc. v. Atkins, 584 S.W.2d 798, 1979 Tenn. App. LEXIS 318 (Tenn. Ct. App. 1979).

4-5-324. Training program for administrative judges or hearing officers.

(a) Each person employed to serve as an administrative judge or hearing officer within the executive branch shall, within the six-month period following the date of such employment, participate in a program of training for administrative judges and hearing officers conducted by the department of human resources, division of training. The department shall issue a certificate of participation to each judge or officer whose attendance is satisfactory.

(b) An administrative judge or hearing officer who hears contested cases referred to the office of the secretary of state by a public institution of postsecondary or higher education involving allegations of sexual assault, dating violence, domestic violence, or stalking shall annually participate in training that satisfies the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), and the federal regulations implementing those statutes, as amended.

History.

Acts 1986, ch. 738, § 4; 2007, ch. 60, § 3; 2017, ch. 134, § 1; 2018, ch. 980, § 2.

Compiler's Notes.

Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

Acts 2018, ch. 980, § 1 provided that the act, which amended this section, shall be known and may be cited as the "Student Due Process Protection Act."

Acts 2018, ch. 980, § 14 provided that public institutions of higher education may implement this part by promulgating emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2018, ch. 980, § 15 provided that the act, which amended this section, shall apply to all contested cases that are requested on or after July 1, 2018.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-325. Payment of costs to respondent.

(a)(1) When a state agency issues a notice to a person, local governmental entity, board, or commission for the violation of a rule or statute and the notice results in a contested case hearing, at the conclusion of the contested case hearing, the hearing officer or administrative law judge may order the state agency to pay to the respondent the reasonable expenses incurred because of the notice, including a reasonable attorney's fee, if the hearing officer or administrative law judge determines that:

(A)(i) The claims contained in the notice are not warranted by existing law nor by a nonfrivolous argument for the extension or modification of existing law; and

(ii) The claims contained in the notice do not have evidentiary support; or

(B) The state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice.

(2) Subdivision (a)(1) is not satisfied simply by a state agency failing to prevail against the respondent.

(3) If the hearing officer or administrative law judge orders the state agency to pay the respondent the reasonable expenses incurred, then the hearing officer or administrative law judge shall set forth in a written order the findings of facts and conclusions of law upon which the determinations are based.

(b) If a final decision in a contested case hearing results in a respondent seeking judicial review under § 4-5-322, then the judge conducting the review may, at the conclusion of the hearing, make the same findings and enter the same order as authorized by the hearing officer or administrative law judge pursuant to subsection (a).

(c) For purposes of this section:

(1) "Notice" means a document required by § 4-5-307(b); and

(2) "Respondent" means a party to whom a state agency issues a notice.

History.

Acts 1994, ch. 869, § 1; 2021, ch. 403, § 1.

Compiler's Notes.

Acts 1994, ch. 869, § 2 provided that this section applies to any applicable citations issued on or after July 1, 1994.

Amendments.

The 2021 amendment rewrote the section which read: "(a) When a state agency issues a citation to a person, local governmental entity, board or commission for the violation of a rule, regulation or statute and such citation results in a contested case hearing, at the conclusion of such hearing, the hearing officer or administrative law judge may order such agency to pay to the party issued a citation the amount of reasonable expenses incurred because of such citation, including a reasonable attorney's fee, if such officer or judge finds that the citation was issued:

"(1) Even though, to the best of such agency's knowledge, information and belief formed after reasonable inquiry, the violation was not well grounded in fact and was not warranted by existing law, rule or regulation; or

"(2) For an improper purpose such as to harass, to cause unnecessary delay or cause needless expense to the party cited.

"(b) If a final decision in a contested case hearing results in the party issued a citation seeking judicial review pursuant to § 4-5-322, the judge, at the conclusion of the hearing, may make the same findings and enter the same order as permitted the hearing officer or administrative law judge pursuant to subsection (a)."

Effective Dates.

Acts 2021, ch. 403, § 3. May 12, 2021.

Law Reviews.

Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

NOTES TO DECISIONS

1. Award of Attorney's Fees.

Attorney's fees could be awarded to a cited party if the citation was not well grounded in fact and not warranted by existing law. Am. Child Care v. State, 83 S.W.3d 148, 2001 Tenn. App. LEXIS 909 (Tenn. Ct. App. 2001).

Chancery court properly dismissed an owner's petition for judicial review of the forfeiture his vehicle because his case was moot where the vehicle had been returned to him, and the owner waived the issue of attorney fees by failing to raise it in his petition for judicial review, and such an award was not statutorily authorized where the only document sent to the owner was a notice that a forfeiture warrant had been issued for the vehicle, not a "a citation" for "the violation of a rule, regulation or statute" Groves v. Tenn. Dep't of Safety & Homeland Sec., — S.W.3d —, 2018 Tenn. App. LEXIS 703 (Tenn. Ct. App. Nov. 30, 2018).

Chancery court erred in awarding the claimants' request for attorney's fees because it lacked subject matter jurisdiction over the petition where more than 60 days had passed from the day the order granting the motion to dismiss became final, no stay was granted, the initial order did not specify a later date for finality, and, while the administrative law judge's failure to address the claimants' requested an award of attorney's fees constituted an error arising from oversight or omission, the ALJ's entry of the corrected order did not commence a new 60-day time period for the filing of a petition for judicial review. Berlanga v. Tenn. Dep't of Safety & Homeland Sec., — S.W.3d —, 2019 Tenn. App. LEXIS 48 (Tenn. Ct. App. Jan. 29, 2019).

Trial court did not err in awarding a physician assistant attorney fees and costs because the facts were not sufficient for the Department of Health to charge Sparks with a violation; the Physician Assistants Act does not include a requirement that a supervising physician be registered with the Drug Enforcement Administration, and the statutes governing health-related boards require them to give notice of changes in the applicable laws prior to bringing charges for enforcement. Tenn. Dep't of Health v. Sparks, — S.W.3d —, 2019 Tenn. App. LEXIS 439 (Tenn. Ct. App. Sept. 6, 2019), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 30 (Tenn. Jan. 15, 2020).

PART 4

REGULATORY FLEXIBILITY ACT OF 2007

4-5-401. Short title.

This part shall be known and may be cited as the "Regulatory Flexibility Act of 2007."

History.
Acts 2007, ch. 464, § 3.

Law Reviews.
Symposium – Memphis in The Law: The Process of Determining What Process is Due: The Continuing Saga of Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) (Donna Harkness), 41 U. Mem. L. Rev. 745 (2011).

4-5-402. Analysis of impact on small business.

(a) Prior to initiating the rulemaking process as described in §§ 4-5-202(a)(2) and 4-5-203(a), all agencies shall conduct a review as to if a rule affects small businesses.

(b) Each agency shall, after June 21, 2007, employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business. The agency shall consider, but not be limited to, each of the following methods of reducing the impact the rule being proposed has on small businesses while remaining consistent with health, safety, and well-being:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules;

(2) Clarity, conciseness, and lack of ambiguity in the rule;

(3) The establishment of flexible compliance and reporting requirements for small businesses;

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses;

(5) The consolidation or simplification of compliance or reporting requirements for small businesses;

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the rule being proposed; and

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

History.
Acts 2007, ch. 464, § 4; 2009, ch. 566, § 23; 2021, ch. 531, §§ 11-13.

Compiler's Notes.
Acts 2009, ch. 566, § 25 provided that the act shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.
The 2021 amendment substituted "as to if a rule" for "of whether a proposed rule or rule" in (a); substituted "the rule being proposed has" for "of the proposed rule" near the end of the introductory language of (b); and substituted "rule being proposed" for "proposed rule" in (b)(6).

Effective Dates.
Acts 2021, ch. 531, § 16. July 1, 2021.

4-5-403. Preparation of economic impact statement.

As part of the rulemaking process for any rule being proposed that may have an impact on small businesses, each agency shall prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses, which shall be published in the Tennessee administrative register, filed with the secretary of state and made available to all interested parties, including the secretary of state, attorney general and reporter and the government operations committees of the senate and the house of representatives, and as described for rules in part 2 of this chapter. The secretary of state may require the online submission of economic impact statements filed pursuant to this part. The statement shall include the following:

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the rule being proposed that would bear the cost of, or directly benefit from the rule being proposed;

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the rule being proposed, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses and consumers;

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business;

(5) A comparison of the rule being proposed with any federal or state counterparts; and

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the rule being proposed.

History.
Acts 2007, ch. 464, § 5; 2016, ch. 576, § 8; 2021, ch. 531, § 14.

Compiler's Notes.
Acts 2021, ch. 531, § 15 provided that the department of state shall promulgate rules, when necessary, to effectuate the purposes of the act.

Amendments.
The 2021 amendment substituted "rule being proposed" for "proposed rule" throughout the section.

Effective Dates.
Acts 2021, ch. 531, § 16. July 1, 2021.

4-5-404. Application.

This part shall not apply to rules that are adopted on an emergency basis under part 2 of this chapter, that are federally mandated, or that substantially codify existing state or federal law.

History.
Acts 2007, ch. 464, § 6; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

PART 5

RIGHT TO EARN A LIVING ACT

4-5-501. Part definitions.

As used in this part:

(1) "Entry regulation" means:

(A) Any rule promulgated by a licensing authority for the purpose of regulating an occupational or professional group, including, but not limited to, any rule prescribing qualifications or requirements for a person's entry into, or continued participation in, any business, trade, profession, or occupation in this state; or

(B) Any policy or practice of a licensing authority that is established, adopted, or implemented by a licensing authority for the purpose of regulating an occupational or professional group, including, but not limited to, any policy or practice relating to the qualifications or requirements of a person's entry into, or continued participation in, any business, trade, profession, or occupation in this state; and

(2) "Licensing authority" means any state regulatory board, commission, council, or committee in the executive branch of state government established by statute or rule that issues any license, certificate, registration, certification, permit, or other similar document for the purpose of entry into, or regulation of, any occupational or professional group. "Licensing authority" does not include any state regulatory board, commission, council, or committee that regulates a person under title 63 or title 68, chapter 11 or 140.

History.
Acts 2016, ch. 1053, § 2.

Compiler's Notes.
For the Preamble to the act relative to the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, please refer to Acts 2016, ch. 1053.

Acts 2016, ch. 1053, § 1 provided that the act, which enacted this part, may be cited as the "Right to Earn a Living Act".

4-5-502. Submission of entry regulations — Review — Disapproval.

(a)(1) No later than December 31, 2016, each licensing authority shall submit a copy of all existing or pending entry regulations pertaining to the licensing authority and an aggregate list of such entry regulations to the chairs of the government operations committees of the senate and house of representatives. The committees shall conduct a study of such entry regulations and may, at the committees' discretion, conduct a hearing regarding the entry regulations submitted by any licensing authority. The committees shall issue a joint report regarding the committees' findings and recommendations to the general assembly no later than January 1, 2018.

(2) After January 1, 2018, each licensing authority shall, prior to the next occurring hearing regarding the licensing authority held pursuant to § 4-29-104, submit to the chairs of the government operations committees of the senate and house of representatives a copy of any entry regulation promulgated by or relating to the licensing authority after the date of the

submission pursuant to subdivision (a)(1). The appropriate subcommittees of the government operations committees shall consider the licensing authority's submission as part of the governmental entity review process and shall take any action relative to subsections (b)-(d) as a joint evaluation committee. Prior to each subsequent hearing held pursuant to § 4-29-104, the licensing authority shall submit any entry regulation promulgated or adopted after the submission for the previous hearing.

(3) In addition to the process established in subdivisions (a)(1) and (2), the chairs of the government operations committees of the senate and house of representatives may request that a licensing authority present specific entry regulations for the committees' review pursuant to this section at any meeting of the committees.

(4) Notwithstanding this subsection (a), the governor or the commissioner of any department created pursuant to chapter 3 of this title, relative to a licensing authority attached to the commissioner's department, may request the chairs of the government operations committees of the senate and house of representatives to review, at the committees' discretion, specific entry regulations pursuant to this section.

(b) During a review of entry regulations pursuant to this section, the government operations committees shall consider whether:

(1) The entry regulations are required by state or federal law;

(2) The entry regulations are necessary to protect the public health, safety, or welfare;

(3) The purpose or effect of the entry regulations is to unnecessarily inhibit competition or arbitrarily deny entry into a business, trade, profession, or occupation;

(4) The intended purpose of the entry regulations could be accomplished by less restrictive or burdensome means; and

(5) The entry regulations are outside of the scope of the licensing authority's statutory authority to promulgate or adopt entry regulations.

(c) The government operations committees may express the committees' disapproval of an entry regulation promulgated or adopted by the licensing authority by voting to request that the licensing authority amend or repeal the entry regulation promulgated or adopted by the licensing authority if the committees determine during a review that the entry regulation:

(1) Is not required by state or federal law; and

(2)(A) Is unnecessary to protect the public health, safety, or welfare;

(B) Is for the purpose or has the effect of unnecessarily inhibiting competition;

(C) Arbitrarily denies entry into a business, trade, profession, or occupation;

(D) With respect to its intended purpose, could be accomplished by less restrictive or burdensome means, including, but not limited to, certification, registration, bonding or insurance, inspections, or an action under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1; or

(E) Is outside of the scope of the licensing authority's statutory authority to promulgate or adopt entry regulations.

(d)(1) Notice of the disapproval of an entry regulation promulgated or adopted by a licensing authority shall be posted by the secretary of state, to the administrative register on the secretary of state's website, as soon as possible after the committee meeting in which such action was taken.

(2) If a licensing authority fails to initiate compliance with any recommendation of the government operations committees issued pursuant to subsection (c) within ninety (90) days of the issuance of the recommendation, or fails to comply with the request within a reasonable period of time, the committees may vote to request the general assembly to suspend any or all of such licensing authority's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

(e) Except as provided in subdivision (a)(2), for the purposes of reviewing any entry regulation of a licensing authority and making final recommendations under this section, the government operations committees may meet jointly or separately and, at the discretion of the chair of either committee, may form subcommittees for such purposes.

History.

Acts 2016, ch. 1053, § 2.

Compiler's Notes.

For the Preamble to the act relative to the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, please refer to Acts 2016, ch. 1053.

Acts 2016, ch. 1053, § 1 provided that the act, which enacted this part, may be cited as the "Right to Earn a Living Act".

CHAPTER 6

DEPARTMENT OF CORRECTION — ADMINISTRATION OF INSTITUTIONS

Part 1. General Provisions

Section

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PART 1

GENERAL PROVISIONS

4-6-101. Charitable institutions free from charters.

All charitable institutions owned and operated by the state are declared to be a part of the state government, and shall be operated and maintained as such, free from the control of any charter of incorporation, or any portion of any act of the general assembly for incorporation.

History.
Acts 1923, ch. 105, § 1; Shan. Supp., § 2677a1; Code 1932, § 4566; T.C.A. (orig. ed.), § 4-601.

Cross-References.
Applicability of chapter to prison contractors providing correctional services, § 41-24-111.

4-6-102. Penitentiaries for adults — Management by department of correction.

The management and government of the state penitentiaries for adults are vested in the department of correction. It has all the power necessary for the full and efficient exercise of the executive, administrative, and fiscal supervision over all such institutions, except as otherwise expressly provided.

History.
Acts 1919, ch. 39, § 2; impl. am. Acts 1921, ch. 4, § 1; impl. am. Acts 1923, ch. 7, § 42; Shan. Supp., § 312b2; mod. Code 1932, § 371; impl. am. Acts 1935, ch. 186, § 1; C. Supp. 1950, § 371; impl. am. Acts 1953, ch. 27, § 1; impl. am. Acts 1955, ch. 102, § 1; modified; T.C.A. (orig. ed.), § 4-602; Acts 1989, ch. 278, § 22.

Cross-References.
Condemnation of land for water and sewage systems, § 12-1-109.
Department of correction generally, title 4, ch. 3, part 6.
Penal and reformatory institutions, title 41.

NOTES TO DECISIONS

1. Prison Disciplinary Procedures.
This broad grant of legislative discretion necessarily includes the power to establish policies and procedures for handling disciplinary matters and envisions that those persons intimately involved with the prison system and not the voting public are best equipped to establish policies and procedures for inmate discipline. Mandela v. Campbell, 978 S.W.2d 531, 1998 Tenn. LEXIS 583 (Tenn. 1998).

4-6-103. Wardens and superintendents — Appointment.

The state penitentiary shall be under the immediate executive control and management of a warden, and each of the other penal, reformatory or charitable institutions of the state shall be under the executive control and management of a superintendent, all subject to the rules and regulations of the department vested with control of such institution and this chapter, the superintendents and wardens to be appointed by the commissioner vested with the administration of such institutions, with the approval of the governor.

History.
Acts 1919, ch. 39, § 8; 1921, ch. 1, § 2; impl. am. Acts 1923, ch. 7, §§ 1, 2, 5, 42; Shan. Supp., § 312b10; Code 1932, § 379; modified; T.C.A. (orig. ed.), § 4-610.

Code Commission Notes. The former language "and the Brushy Mountain state penitentiary" following "The state penitentiary" was deleted as obsolete by the Code Commission in 2015, as the prison no longer exists.

Cross-References.
Appointment of professional staff and employees, § 41-1-102.
Warden of state penitentiary, § 41-1-104.

4-6-104. Salaries of wardens and superintendents.

(a) The warden of the state penitentiary shall receive a salary payable monthly upon the warrant of the commissioner of finance and administration.

(b) The salaries of all superintendents shall be fixed by the commissioner vested with the administration of the respective institutions, unless otherwise fixed by law before the appointment of such superintendent, and the same shall not be changed during their terms of office.

(c) The commissioner shall file with the commissioner of finance and administration a statement in writing showing the salaries of such other superintendents, and the same shall be paid monthly upon the warrant of the commissioner of finance and administration.

History.
Acts 1919, ch. 39, § 9; impl. am. Acts 1923, ch. 7, §§ 1, 2, 6, 42; Shan. Supp., § 312b12; Code 1932, § 381; impl. am. Acts 1937, ch. 33, §§ 7, 24; C. Supp. 1950, § 381; modified; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 4-611.

Code Commission Notes. The former language "and the warden of the Brushy Mountain state penitentiary, respectively, shall each" following "The warden of the state penitentiary" in (a) was deleted as obsolete by the Code Commission in 2015, as the prison no longer exists.

4-6-105. No impairment, interruption or diminution of employee rights, salary, benefits, leave accumulation or employment on transfer of career service employees to the department of correction.

The initial transfer of any career service employee pursuant to the transfer of probation and parole field services and the administration of the community corrections program from the board of parole to the department of correction shall not result in any impairment, interruption or diminution of employee rights, salary, benefits, leave accumulation or employment. The commissioner of human resources is authorized to determine if there has been any impairment of rights, salary, benefits, leave accumulation or employment as a result of the initial transfer. Any career service employee may seek redress of any such determination through a request for declaratory order by the commissioner of human resources pursuant to § 4-5-223.

History.
Acts 2012, ch. 727, § 3.

Compiler's Notes.
Former § 4-6-105 (Acts 1977, ch. 112, § 4; T.C.A., § 4-612), concerning the director of institutional farms, was repealed by Acts 1999, ch. 390, § 2, effective June 16, 1999.

For the preamble to the act concerning transfers of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which enacted this section, shall be fully accomplished on or before January 1, 2013.

4-6-106. Compensation plan for correctional officers.

The commissioner of correction shall formulate and implement a compensation plan for correctional officers by which such officers are paid at least the average compensation of correctional officers in the southeastern United States with similar qualifications and years of service. Such plan shall be revised annually to reflect changes in the southeast average compensation. The commissioner shall report annually to the general assembly on the components and ranges in such plan. Such compensation plan shall only be implemented in years in which funds are appropriated to pay the average compensation as determined by such survey.

History.
Acts 2005, ch. 418, § 1.

Compiler's Notes.
Former § 4-6-106 (Acts 1919, ch. 39, § 11; Shan. Supp., § 312b16; Code 1932, § 385; T.C.A. § 4-614), concerning residences and supplies of institutional employees, was repealed by Acts 1980, ch. 755, § 2.

4-6-107. Commissioner's authority over officers of penitentiaries — Presumption in favor of commissioner.

(a) The commissioner shall make rules for the prosecution of the commissioner's powers and may require the performance of additional duties by the officers of the penitentiaries named in § 4-6-102, so as to fully meet the requirements, intents and purposes of this chapter, and particularly those relating to the making of estimates and furnishing proper proof of the use made of all articles furnished or produced at such penitentiaries.

(b) In case of an apparent conflict between the powers conferred by law upon

any warden or superintendent and those conferred by this chapter, upon the commissioner, the presumption shall be conclusive in favor of the commissioner.

History.
Acts 1919, ch. 39, § 12; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b17; Code 1932, § 386; T.C.A. (orig. ed.), § 4-615.

4-6-108. Matron of penitentiary.

(a) The matron of the state penitentiary shall be appointed by the commissioner of correction, and shall receive a salary, payable monthly upon the warrant of the commissioner of finance and administration.

(b) It is the matron's duty to look after the moral conduct and general welfare of the female inmates, and to perform such other duties as may be required by the commissioner.

History.
Acts 1919, ch. 39, § 10; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b15; Code 1932, § 384; Acts 1933, ch. 159, § 1; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 384; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 4-618.

4-6-109. Hospitalization of inmates.

Whenever, in the judgment of the physician or physicians in charge of any of the charitable or penal institutions of the state, it becomes necessary to perform an operation or give special treatment or care to any inmate of any such institution, if the institution is not equipped for the performance of the operation or to give special treatment, the physician in charge of such institution may, with the approval of the commissioner vested with the administration of such institution, have such inmate placed in a first-class hospital of the state where the inmate may have the necessary operation, hospitalization, care and treatment.

History.
Acts 1943, ch. 32, § 1; C. Supp. 1950, § 382.1; modified; T.C.A. (orig. ed.), § 4-619.

4-6-110. Dentists — Appointment and removal.

The commissioner of the department having control of the state prisons shall appoint a dentist, or may appoint dentists, whose duty it is to do the necessary dental work for the inmates of such of these institutions as may be under the commissioner's administration. Such dentist or dentists may at any time be removed by the commissioner for just cause. Only dentists who are licensed to practice dentistry in this state shall be eligible for appointment. Such appointment may be by employment in the department or by contract for services.

History.
Acts 1919, ch. 173, § 1; impl. am. Acts 1919, ch. 17, § 1; impl. am. Acts 1921, ch. 4, § 1; impl. am. Acts 1923, ch. 7, §§ 1, 2, 3, 5, 42; Shan. Supp., § 2642a54; mod. Code 1932, § 4567; impl. am. Acts 1955, ch. 17, § 1; impl. am. Acts 1955, ch. 220, § 1; modified; impl. am. Acts 1971, ch. 90, § 1; impl. am. Acts 1971, ch. 131, § 1; T.C.A. (orig. ed.), § 4-620; Acts 2003, ch. 355, § 21; 2012, ch. 1026, § 3.

Compiler's Notes.
Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act

shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Cross-References.
Supervision of dentists and dental equipment by commissioner of health, § 68-1-303.

4-6-111. Dentists — Facilities.

The superintendent of each of the institutions specified in § 4-6-110 shall provide a suitable room for the dentist, with all necessary equipment, with the approval of the commissioner, and the same shall be paid for out of the funds appropriated for the maintenance of the institution for which the equipment is purchased.

History.
Acts 1919, ch. 173, § 2; impl. am. Acts 1923, ch. 7, §§ 1, 2, 3, 42; Shan. Supp., § 2642a55; Code 1932, § 4568; modified; T.C.A. (orig. ed.), § 4-621.

4-6-112. Dentists — Duties.

(a) It is the duty of dentists appointed pursuant to § 4-6-110 to inspect at regular intervals the teeth of each inmate of the institutions specified in § 4-6-110, and to keep a record of the work necessary to be done on the teeth of each inmate for the protection and preservation of the health of the inmate. So much of the necessary work shall be done by the dentist as possible.

(b) Work that is not necessary for the protection and preservation of the health of an inmate shall not be done by such dentists.

(c) Preference shall at all times be given by such dentists to inmates who are being supported in the institutions specified in § 4-6-110 at the expense of the state or county.

(d) All other dental work except that set out in subsections (a)-(c) may be done by the dentist for inmates who are not being supported by the state or county, and the work done for any such paying inmate must be paid for by the inmate or by the person or persons paying for the support of such inmate in the institution, a reasonable charge to be made for such work and payment to be made to the superintendent who shall apply the same as other income of the institution is applied.

(e) Such dentists shall at no time do any work for any officer or employee of any of such institutions.

History.
Acts 1919, ch. 173, § 3; Shan. Supp., § 2642a56; Code 1932, § 4569; Acts 1945, ch. 93, § 1; C. Supp. 1950, § 4569; T.C.A. (orig. ed.), § 4-622.

4-6-113. Dentists — Compensation.

Each dentist appointed pursuant to § 4-6-110 shall receive compensation as fixed by the commissioner, subject to the approval of the department of revenue, payable monthly, and shall receive necessary traveling expenses, when required to make a trip by the commissioner, and shall in addition be provided with a room and board at each of such institutions.

History.
Acts 1919, ch. 173, § 4; impl. am. Acts 1923, ch. 7, §§ 1, 2, 6, 42; Shan. Supp., § 2642a57; mod. Code 1932, § 4570; modified; impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 4-623.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-6-114. Architects and construction supervisors.

The commissioner vested with the administration of the institutions named in § 4-6-102 may employ an architect or architects skilled in methods of sanitation and the preparations of plans, specifications, estimates and details for buildings, betterments and such items of equipment as may be required in any of those institutions, and also employ such mechanical engineers, superintendents and supervisors as the commissioner may deem necessary, and fix their titles and compensations, which, with all necessary expenses, when itemized and approved, shall be paid like other expenses of the department.

History.
Acts 1919, ch. 39, § 16; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b22; Code 1932, § 391; modified; T.C.A. (orig. ed.), § 4-624.

4-6-115. Detail of construction personnel between penitentiaries.

The commissioner of correction has the authority to detail any engineer or skilled worker connected with the main prison or other penitentiaries under the commissioner's control for special service at the other penitentiaries named in § 4-6-102. Services thus rendered and the expense thereof shall be paid by the penitentiary for which the work is performed to the penitentiary furnishing same, such sum as may be fixed by the commissioner.

History.
Acts 1919, ch. 39, § 17; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b23; Code 1932, § 392; T.C.A. (orig. ed.), § 4-625.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-6-116. Accounts — Auditing — Reports.

(a) The commissioner of correction shall keep in the commissioner's office a proper and complete set of books and accounts with each penitentiary named in § 4-6-102, which shall clearly show the nature and amount of every expenditure authorized and made at such penitentiary, the receipts from the expenditure, and contain an account of all appropriations made by the general assembly and of all other funds with the disposition thereof.

(b) The department of finance and administration shall prescribe the form of vouchers, records and methods of keeping accounts at each of the penitentiaries, which shall be as nearly uniform as possible.

(c)(1) The commissioner has the right and power to examine the records of each penitentiary at any time, and has the power to authorize its bookkeeper, accountant, or any other employee to examine and check the records, accounts and vouchers, or take an inventory of the property of any penitentiary, or to do whatever may be necessary, and to pay the actual and reasonable expenses incurred in such service upon an itemized account thereof being filed and approved.

(2) It is the duty of the commissioner to cause to be examined and audited the books of the different penitentiaries under the commissioner's supervi-

sion at least once in each year, and as often as may be necessary.

(3) It is the duty of the comptroller of the treasury to make such expert examinations when called upon to do so by the commissioner.

(4) The officers of such penitentiaries must permit such examinations and auditing and must, upon demand, produce all books, contracts and papers in their respective offices, without unnecessary delay, and must furnish, upon demand, the information touching the books, papers, and contracts and other matter pertaining to their respective offices.

(5) When the examinations are made, reports thereof shall be made in duplicate, one (1) copy of which shall be filed with the governor, and the other with the commissioner of finance and administration.

History.
Acts 1919, ch. 39, § 19; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b25; Code 1932, § 394; impl. am. Acts 1937, ch. 33, §§ 5, 24; C. Supp. 1950, § 394; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; modified; T.C.A. (orig. ed.), § 4-627.

4-6-117. Monthly reports of receipts and expenditures.

It is the duty of each warden and superintendent to make to the commissioner of correction a monthly statement showing the entire amount received by such warden or superintendent from all sources, and all expenditures during the month for which the report is made, such report to be made on forms prepared by the commissioner, and a copy thereof shall be filed with the commissioner of finance and administration.

History.
Acts 1919, ch. 39, § 20; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b26; Code 1932, § 395; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 395; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 4-628.

4-6-118. Estimates — Monthly estimates required.

For the purpose of proper regulation, recording and auditing the various expenditures of the penitentiaries named in § 4-6-102, the managing officers thereof shall prepare, and present to the commissioner of correction in triplicate, not less than fifteen (15) days before the first day of each month and on forms furnished by the commissioner, a detailed estimate of all supplies, materials, improvements and money needed during each month.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b27; Code 1932, § 396; modified; T.C.A. (orig. ed.), § 4-629.

4-6-119. Estimates — Review by commissioner of correction.

The commissioner of correction shall review the estimates required by § 4-6-118, and in writing advise changes, if any, giving the commissioner's reasons therefor. The officer making the estimate may appeal to the commissioner on any change so advised, due notice of which shall be given such officer.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b28; Code 1932, § 397; modified; T.C.A. (orig. ed.), § 4-630.

4-6-120. Estimates — Staple articles.

Estimates for periods longer than one (1) month may be made in the same manner specified in § 4-6-118 by the managing officer for staple articles designated by the commissioner of correction, or for other supplies.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b29; Code 1932, § 398; T.C.A. (orig. ed.), § 4-631.

4-6-121. Estimates — Contingent funds.

Each estimate under §§ 4-6-118 — 4-6-123 may include a contingent fund, not to exceed three percent (3%) of the total amount for maintenance for the period of the estimate, for which no detailed account need be given in the estimate, but such funds shall be drawn upon only in due form as provided in this chapter and under the rules of the commissioners of correction and finance and administration.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b30; Code 1932, § 399; T.C.A. (orig. ed.), § 4-632.

4-6-122. Estimates — Approved copies.

The commissioner of correction shall return to the managing officer one (1) copy of every estimate with the commissioner's approval or alterations in writing, furnishing one (1) copy to the commissioner of finance and administration and filing the third in the office of the commissioner of correction.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b31; Code 1932, § 400; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 400; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; modified; T.C.A. (orig. ed.), § 4-633.

4-6-123. Estimates — Review by commissioner of finance and administration — Warrants.

The commissioner of finance and administration shall ascertain that the estimates so received do not exceed the respective appropriations and shall draw warrants on the state treasurer monthly for the salary and contingent funds for each institution, which shall be placed in the hands of the managing officer thereof.

History.
Acts 1919, ch. 39, § 21; Shan. Supp., § 312b32; Code 1932, § 401; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 401; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 4-634.

4-6-124. Vouchers — Form and disposition.

Itemized payrolls or vouchers for penitentiaries named in § 4-6-102 shall be drawn in triplicate. One (1) copy shall be kept on file by the managing officer, two (2) sent to the commissioner of correction, who upon approval shall send

one (1) copy to the commissioner of finance and administration, who shall issue a warrant on the state treasurer thereon.

History.
Acts 1919, ch. 39, § 21; Shan. Supp., § 312b33; Code 1932, § 402; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 402; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; modified; T.C.A. (orig. ed.), § 4-635.

Cross-References.
Salary and contingent funds placed in hands of managing officer of institution not later than first of each month, § 4-6-127.

4-6-125. Vouchers — Officer's certification.

Each voucher shall contain a statement of the managing officer certifying that:

(1) The supplies and materials purchased conformed to the contract and samples, and the improvements or repairs made or special services rendered were fully satisfactory;

(2) The approving officer was in no way financially interested in the transaction to which the same relates; and

(3) The approving officer has full knowledge of the value of the purchase or work or service in question.

History.
Acts 1919, ch. 39, § 21; Shan. Supp., § 312b34; Code 1932, § 403; T.C.A. (orig. ed.), § 4-636.

4-6-126. Vouchers — Form of certificate — Temporary employment payrolls.

The statement provided for in § 4-6-125 shall be made according to forms provided by the commissioner of correction; provided, that payrolls for temporary employees in cases of emergency may be made at any time after the services are performed, but all such payrolls shall be certified by the managing officer in the same manner as other vouchers, who shall also certify that each person named in the payroll actually rendered the services for the time and at the rate charged therein.

History.
Acts 1919, ch. 39, § 21; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b35; Code 1932, § 404; T.C.A. (orig. ed.), § 4-637.

4-6-127. Control of funds by treasurer — Disposition of collections.

(a) The state treasurer has charge of all funds under the jurisdiction of the department having control of the penitentiaries named in § 4-6-102, and shall pay out the same only in accordance with this chapter.

(b) The moneys designated and approved by the commissioners of correction and finance and administration as salary and contingent funds in the monthly estimates shall be placed not later than the first day of each month in the hands of the managing officer of each penitentiary or under the managing officer's control, who shall act as treasurer thereof.

(c) Moneys collected from various sources, such as the sale of goods, farm products and all miscellaneous articles, shall be transmitted on or before Monday of each week to the state treasurer, and a detailed statement of such collections made to the commissioner of correction by each managing officer.

History.
Acts 1919, ch. 39, § 22; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b36; Code 1932, § 405; impl. am. Acts 1937, ch. 33, § 24; C. Supp. 1950, § 405; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; modified; T.C.A. (orig. ed.), § 4-638.

4-6-128. Appropriations — Classification.

(a) The appropriations for state penal, reformatory or charitable institutions shall be of three (3) classes:

(1) Maintenance;

(2) Ordinary repairs and improvements; and

(3) Specific purposes.

(b) Appropriations for specific purposes shall cover all items for construction, extraordinary repairs and purchase of land and shall be used only for the institutions and purposes specified therein.

History.
Acts 1919, ch. 39, § 23; Shan. Supp., § 312b43; Code 1932, § 412; modified; T.C.A. (orig. ed.), § 4-639.

4-6-129. Appropriations — Requests.

Each superintendent and warden of an institution named in § 4-6-102 shall, before each session of the general assembly, present to the department of correction an itemized list of appropriations desired for maintenance, repairs, and improvements and special purposes as such superintendent or warden considers necessary for the period of time to be covered by appropriations.

History.
Acts 1919, ch. 39, § 23; impl. am. Acts 1923, ch. 7, §§ 1, 42; Shan. Supp., § 312b37; Code 1932, § 406; T.C.A. (orig. ed.), § 4-640.

4-6-130. Appropriations — Tabulation of requests — Presentation to general assembly.

The commissioner having control of such institution shall tabulate such statements with the commissioner's recommendations. It shall then be the duty of the commissioner to present the needs of the institutions to the general assembly.

History.
Acts 1919, ch. 39, § 23; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b38; Code 1932, § 407; modified; T.C.A. (orig. ed.), § 4-641.

4-6-131. Appropriations — Maintenance allowance included in requests.

For the purpose of requesting appropriations from the general assembly, a per capita allowance for the inmates, patients and pupils of each of the institutions shall be arrived at and a total allowance for maintenance asked for on the basis of actual number and estimated increase.

History.
Acts 1919, ch. 39, § 23; Shan. Supp., § 312b39; Code 1932, § 408; T.C.A. (orig. ed.), § 4-642.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-6-132. Appropriations — Special needs itemized in requests.

Every special need shall be itemized and the appropriation asked for that specific purpose.

History.
Acts 1919, ch. 39, § 23; Shan. Supp., § 312b40; Code 1932, § 409; T.C.A. (orig. ed.), § 4-643.

4-6-133. Appropriations — Information on requests.

The commissioner of correction shall furnish to the governor and to the general assembly such information as may be required regarding appropriations requested.

History.
Acts 1919, ch. 39, § 23; Shan. Supp., § 312b41; Code 1932, § 410; modified; T.C.A. (orig. ed.), § 4-644.

4-6-134. Appropriations — Commissioner's control.

It is the intent that all requests for appropriations for penitentiaries named in § 4-6-102 shall be placed under sole control of the commissioner having control of such penitentiary, and that appropriations for the maintenance and for ordinary repairs and improvements thereof shall be made to the commissioner in single sums to be used for the several penitentiaries according to their varying needs.

History.
Acts 1919, ch. 39, § 23; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b42; Code 1932, § 411; modified; T.C.A. (orig. ed.), § 4-645.

4-6-135. Sale of mining or industrial products — Approval of contracts.

(a) All contracts covering the sale or disposal of the output of the state mines, or any factories or industries operated by the state, must be submitted to the commissioner of correction for the commissioner's approval.

(b) All such contracts shall, before the same become effective, be transmitted, with all papers and recommendations, to the commissioner, and shall be effective only from the date of their approval.

History.
Acts 1919, ch. 39, § 14; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b19; Code 1932, § 388; T.C.A. (orig. ed.), § 4-646.

4-6-136. Sale of mining products — Contracts authorized.

(a) The commissioner of correction, with the approval of the commissioner of general services, is hereby authorized to make such disposition by way of sale of slate and other waste products of the coal mines owned and operated by the state as the commissioner of correction may deem fit and proper.

(b) To this end, the commissioner of correction is authorized to enter into contracts for the sale thereof for a period of time not in excess of ten (10) years, such contracts to be upon such terms as may be mutually agreeable to the commissioner of correction, the commissioner of general services and the contracting party.

(c) "Other waste products" as used in subsection (a) includes coal dust.

History.
Acts 1953, ch. 73, § 1 (Williams, § 388.2); impl. am. Acts 1953, ch. 163, § 1; Acts 1955, ch. 22, § 1; impl. am. Acts 1955, ch. 102, § 1; impl. am. Acts 1959, ch. 9, § 5; impl. am. Acts 1961, ch. 97, § 5; T.C.A. (orig. ed.), § 4-647.

Cross-References.
Sale of coal from state mines, except for use of state, prohibited, § 41-22-106.

4-6-137. Sale of mining products — Petros mines.

The commissioner of correction, by and with the consent and approval of the governor, is authorized to enter into such contracts for the sale of all coal mined at the state mines, situated at Petros, as are permitted by § 41-22-106, the contracts to be made at such prices and covering such periods of time as, in the opinion of the commissioner, will best subserve and protect the interests of the state and the welfare of the inmates. The contracts are to be made and entered into without the necessity of advertising.

History.
Acts 1937, ch. 66, § 1; C. Supp. 1950, § 388.1; impl. am. Acts 1955, ch. 102, § 1; T.C.A. (orig. ed.), § 4-648.

4-6-138. Use of inmates for personal gain.

It is unlawful for any person having supervision or control of inmates of the department of correction to use, or allow to be used, such inmates for personal gain or to allow such inmates to work on private property, except as provided by law.

History.
Acts 1953, ch. 180, § 1 (Williams, § 418.2); impl. am. Acts 1955, ch. 102, § 1; T.C.A. (orig. ed.), § 4-649.

4-6-139. Unlawful use of inmates — Class E felony.

A violation of § 4-6-138 is a Class E felony.

History.
Acts 1953, ch. 180, § 2 (Williams, § 418.2); T.C.A. (orig. ed.), § 4-650; Acts 1989, ch. 591, § 16.

Cross-References.
Penalty for Class E felony, § 40-35-111.

4-6-140. Records of inmates.

(a) The commissioner of correction shall keep in the commissioner's own office, accessible only to the commissioner's secretary, and proper clerks, except by the commissioner's consent, or the orders of the judge of a court of record, a record showing the name, residence, sex, age, nativity, occupation, condition and date of entrance or commitment of every inmate, patient or pupil in the several institutions governed by the commissioner, the date, cause and terms of discharge, and the conditions of such person at the time of leaving, and also all transfers from one (1) institution to another, and, if dead, the date and cause.

(b) These and such other facts as the commissioner may, from time to time, require shall be furnished by the managing officer of each institution, within

ten (10) days after the commitment, entrance, death or discharge of an inmate, patient or pupil, and the managing officer shall make a special report within twenty-four (24) hours thereafter, giving the circumstances as fully as possible.

(c) Notwithstanding any other law to the contrary, all inmate records and the information contained therein shall be open for public inspection. Any information contained in an inmate record that is otherwise made confidential by § 10-7-504, shall remain confidential. The commissioner has the authority to delete from any such record the name of, or any identifying information concerning, any department employee, law enforcement officer or informant or other inmate if, in the commissioner's opinion, public disclosure of such name or information would place the safety of such employee, law enforcement officer, informant or inmate in jeopardy. If the commissioner determines that a name or identifying information cannot be deleted in a manner sufficient to protect any such person, the commissioner may refuse to disclose the document in which such name or identifying information appears.

History.
Acts 1919, ch. 39, § 18; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b24; Code 1932, § 393; modified; T.C.A. (orig. ed.), § 4-651; Acts 1988, ch. 999, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

Law Reviews.
Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

4-6-141. Investigations ordered by governor.

The governor, in the governor's discretion, may at any time order an investigation by the department having control of the management of any penal, reformatory or charitable institution of the state, and, in making such investigation, the commissioner has the power to send for persons and papers, and to administer oaths and affirmations, and the report of such investigation, with the testimony, shall be made to the governor, and shall be submitted by the governor, with the governor's suggestions, to the general assembly.

History.
Acts 1895, ch. 193, § 2; impl. am. Acts 1923, ch. 7, §§ 2, 42; Shan., § 2675; Code 1932, § 4572; modified; T.C.A. (orig. ed.), § 4-653.

4-6-142. Interstate traveling expenses.

No expenditures for traveling expenses to other states, or for attending an interstate or national convention or association, shall be made by any member or employee of the department of correction or by any officer of an institution under its control, unless authority is granted by the commissioner of correction, by a writing, stating the purpose and reason therefor.

History.
Acts 1919, ch. 39, § 26; impl. am. Acts 1923, ch. 7, §§ 1, 2, 42; Shan. Supp., § 312b49; Code 1932, § 418; T.C.A. (orig. ed.), § 4-654.

4-6-143. Special school district of penal and reformatory institutions.

(a) The penal and reformatory institutions under the control of the commissioner of correction shall be a special school district, which shall be given the

same funding consideration for federal funds that special schools within the state are given.

(b) The schools within such institutions shall be under the control of the commissioner who shall serve as the board of education and director of schools for such district.

(c)(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the state board of education.

(2) The commissioner of education may grant waivers for such provisions of the law and regulations with which the schools cannot comply because of the penal and reformatory function of the institutions on an annual basis and in response to the director of education's written request and justification. Such exceptions shall be in writing.

(d)(1) Each teacher in the special school district shall receive annual compensation at a rate of one tenth ($^1/_{10}$) times twelve (12) of the annual compensation in effect in the county in which the respective institution is located or one tenth ($^1/_{10}$) times twelve (12) of the average of the annual compensation of all the counties that are contiguous with the county in which the respective institution is located, whichever is greater, solely out of the state appropriations made to the respective institutions.

(2) This subsection (d) shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection (d).

(4) Longevity shall not be paid to teachers in the special school district under both §§ 8-23-206 and 49-5-402.

(e) The commissioner of correction shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f) Nothing in the language of this section shall be construed as prohibiting any local school district from issuing a diploma to a resident of a state correctional institution, upon certification of the principal of a state correctional school. School records of any juvenile in the correctional programs who is issued a diploma by a local school district shall be maintained by such local school district; provided, that all references to the juvenile's commitment to and treatment by the department of children's services are expunged.

(g) The special school district of penal and reformatory institutions shall have the powers, privileges and authority exercised or capable of exercise by any other school district.

(h) The effect of this section shall not be to provide state funds to the special school district of penal and reformatory institutions through the basic education program (BEP).

History.

Acts 1974, ch. 647, §§ 1-3; 1977, ch. 322, § 1; 1977, ch. 411, § 1; T.C.A., § 4-655; Acts 1981, ch. 437, §§ 1-4; 1985, ch. 450, § 1; 1985 (1st Ex. Sess.), ch. 5, § 20; 1987, ch. 377, § 1; 1996, ch. 1079, § 16.

Code Commission Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Compiler's Notes.

Acts 1996, ch. 1079, § 184 provided: "Any

provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

Cross-References.
Discipline in special school district of penal and reformatory institutions, title 49, ch. 6, part 44.

Law Reviews.
A Critical Survey of Developments in Tennessee Family Law in 1976-77, VI. Juvenile Courts (Neil Cohen), 45 Tenn. L. Rev. 469 (1978).

4-6-144. Library region for penal and reformatory institutions.

(a) There is created a library region to be composed of the penal and reformatory institutions under the control of the department of correction.

(b) The library shall have a branch library at each of the penal and reformatory institutions.

(c) A librarian shall be appointed who shall serve as a consultant in the state library and archives, public library section.

(d) The commissioner of correction shall ensure that penal and reformatory institutions shall comply with the requirements for libraries as provided in title 10, chapter 5, part 1, except for such provisions of any law, rule or regulation that conflicts with the primary penal and reformatory function of such institutions.

History.
Acts 1974, ch. 764, §§ 1-5; T.C.A., § 4-656.

4-6-145. Information from clerks, superintendents, and jailers.

The clerks of all trial courts exercising criminal jurisdiction, the superintendents of all local workhouses, and all jailers shall, upon the request of the department of correction, furnish to the department pertinent information relating to felony offenders committed to local workhouses and jails, including the names of offenders, offenses committed, sentences imposed, presentence reports and all other information deemed relevant by the department for long-term correctional planning.

History.
Acts 1985 (1st Ex. Sess.), ch. 5, § 21.

Cross-References.
Criminal justice agency statistics, § 8-1-110.

4-6-146. Confiscation of contraband.

(a) The commissioner of correction is authorized to permanently confiscate weapons, alcohol, controlled substances, controlled substance analogues, cash and other items that could be detrimental to institutional security or adversely affect an inmate's rehabilitation, if such items have been specifically designated as contraband by the commissioner, and such items are found on the grounds of any institution under the supervision of the department of correction.

(b) "Contraband" does not include cash lawfully in possession of an inmate for allowable purposes within an institution.

History.
Acts 1990, ch. 669, § 2; 2012, ch. 848, § 1.

4-6-147. Confiscated cash fund.

(a) There is established a separate department of correction confiscated cash fund.

(b) All moneys collected as contraband from the inmate population at any of the facilities operated by or under the authority of the department of correction shall be paid over to the department of correction for deposit into the fund established by this section.

(c) The purpose of the fund is to enhance the department's ability to combat drug trafficking in facilities operated by or under the authority of the department of correction through the use of accepted investigative techniques and interdiction efforts, including, but not limited to, the use of canine units. Any moneys within the fund shall be withdrawn or expended only for accepted drug trafficking investigative techniques and interdiction efforts, including, but not limited to, the purchasing, training and maintenance of the department's canine units. Accounting procedures for the financial administration of the funds shall be in keeping with those prescribed by the comptroller of the treasury.

(d)(1) Moneys retained in the confiscated cash fund shall be invested by the state treasurer under appropriate rules and regulations to the end that adequate funds will be available for the purposes of this section.

(2) Revenue that is produced for the confiscated cash fund shall not revert to the state general fund and shall not be subject to impoundment or allotment reserve, but shall be managed on a revolving no-quarter basis.

History.
Acts 2006, ch. 1007, § 1; 2007, ch. 34, § 1.

Cross-References.
Training to respond to mentally ill persons, § 38-8-119.

4-6-148. Temporary retention of disabled correctional officer or youth service worker.

Whenever a correctional officer or youth service worker is injured in the line of duty and such injury disables such person from performing such person's regular duties, whether such disability is temporary or permanent, it is lawful for the commissioner of correction, or the commissioner of children's services, as appropriate, in such commissioner's sound discretion and with the approval of the governor and the attorney general and reporter, to retain such injured disabled employee upon the regular payroll of the department of correction or the department of children's services, as appropriate, until the person's claim for compensation for such disability is determined by the division of claims and risk management.

History.
Acts 1987, ch. 178, § 1; 1989, ch. 278, § 23; 1996, ch. 1079, § 16; T.C.A. § 4-7-117; Acts 2017, ch. 271, § 1.

Code Commission Notes. Former § 4-7-117, concerning temporary retention of disabled correctional officer or youth service worker, was transferred to this section in 2011 by the code commission in 2011.

Cross-References.
Youth services officer, § 37-1-106.

4-6-149. Eligibility to receive credit towards receipt of occupational license for occupational, career, or technical training in schools or correctional institution.

(a) Persons who receive certified occupational, career, or technical training in schools or correctional institutions pursuant to this chapter are eligible to receive equivalent credit towards the receipt of an occupational license relating to the training received.

(b)(1) The occupational, career, or technical training received pursuant to this chapter must be consistent with the requirements for licensure by licensing authorities in order for persons to be eligible for equivalent credit under subsection (a).

(2) Any person aggrieved by the decision of a licensing authority concerning eligibility for equivalent credit under this section may appeal to the commissioner of commerce and insurance or the commissioner's designee for a determination of whether the training meets the requirements for licensure. An appeal under this subdivision (b)(2) must be conducted in the same manner as is provided in § 4-5-322, for a contested case hearing under the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(c) The commissioner of commerce and insurance, in collaboration with the commissioner of correction and the various departments charged with supervision of licensing authorities shall promulgate rules to effectuate the purposes of chapter 492 of the Public Acts of 2019. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(d) This section applies to all professions and occupations regulated under title 62.

History.
Acts 2019, ch. 492, § 2.

PART 2

VOLUNTEER INMATE WORK PROGRAM

4-6-201. Creation of program — Criteria.

(a) There is established a volunteer inmate work program in the department of correction for minimum risk inmates.

(b) The department shall, by rules and regulations promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, establish criteria for participation in such program. Such rules and regulations shall also develop criteria for work projects pursuant to such program, including, but not limited to, the following:

(1) Public works projects;

(2) Conservation projects; and

(3) Rehabilitation of cemeteries.

History.
Acts 1981, ch. 421, § 1.

Cross-References.
Correctional work programs, title 41, ch. 22.

Felons and other prisoners to work on roads, §§ 41-2-123 — 41-2-125.

Use of inmates to remove litter on acquired municipal property, § 13-21-204.

4-6-202. Funding.

Funds available for the development and implementation of a volunteer inmate work program and for construction of a facility or facilities to house inmates participating in such programs to help alleviate over-crowding in existing institutions shall be as provided by the general appropriations act. Any such facility shall be constructed by volunteer prison labor.

History.
Acts 1981, ch. 421, § 2.

CHAPTER 7

HIGHWAY PATROL

Part 1. General Provisions

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PART 1
GENERAL PROVISIONS

4-7-101. Establishment — Personnel.

There shall be a police force to be known and designated as the Tennessee highway patrol, which shall consist of one (1) chief and such other personnel as may be designated by the commissioner of safety, with the approval of the governor.

History.
Acts 1929 (Ex. Sess.), ch. 25, § 1; Code 1932, § 11460; Acts 1951, ch. 256, § 1; T.C.A. (orig. ed.), § 4-701.

Cross-References.
Compensation of law-enforcement officers for injury or death, title 7, ch. 51, part 2.

NOTES TO DECISIONS

1. Status of Members of Patrol.
The members of the state highway patrol are governmental officers and agents. Hughes v. State, 176 Tenn. 330, 141 S.W.2d 477, 1940 Tenn. LEXIS 78 (1940).

4-7-102. Members — Conditions of employment — Oath.

(a)(1) The members of the Tennessee highway patrol shall be appointed by the commissioner of safety, by and with the consent and approval of the governor.

(2) Members shall serve at the will and pleasure of the commissioner.

(3) Members' compensation is to be fixed by the commissioner, with the approval of the governor.

(b) Each member of the Tennessee highway patrol, upon the member's appointment and before entering upon the member's duties, shall swear and subscribe to the following oath:

"I do solemnly swear that I will support the Constitution of Tennessee, and will well and faithfully perform the duties imposed upon me as a member of the Tennessee highway patrol to the best of my ability; that I will serve the state of Tennessee honestly and faithfully, and will obey the orders of the officers and officials placed over me according to law."

(c) Notwithstanding any other law to the contrary, each member employed after July 1, 2006, shall meet the requirements for minimum standards as set forth in title 38, chapter 8, part 1, and as required by the Tennessee peace

officer standards and training commission; however, these Tennessee highway patrol members shall not be entitled to receive a police pay supplement as authorized under § 38-8-111.

History.
Acts 1929 (Ex. Sess.), ch. 25, § 2; Code 1932, § 11461; impl. am. Acts 1937, ch. 33, § 44; impl. am. Acts 1939, ch. 11, §§ 10, 27; impl. am. Acts 1945, ch. 28, §§ 1-3; C. Supp. 1950, § 11461; Acts 1951, ch. 256, § 2; 1970, ch. 601, § 2; T.C.A. (orig. ed.), § 4-702; Acts 2006, ch. 1009, § 1.

4-7-103. List of applicants to fill vacancies — County of residence.

(a) When the commissioner of safety proposes to fill a vacancy in the highway patrol, the commissioner shall request the commissioner of human resources to certify the names of persons eligible for appointment.

(b) The commissioner of human resources shall certify to the commissioner of safety a list of the top eligible applicants from the register.

(c)(1) Residence of the applicants shall be disregarded in making up such a list.

(2) In making appointments from among the eligible applicants on the list, the county of residence of the applicants may be considered in order to achieve some equitable distribution of positions in the state service in proportion to county populations.

History.
Acts 1974, ch. 688, § 1; T.C.A., § 4-713; Acts 2007, ch. 60, § 3.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-7-104. Duties.

It is the duty of the members of the Tennessee highway patrol, under the direction of the commissioner of safety, to:

(1) Patrol the state highways and enforce all laws, and all rules and regulations of the department of transportation regulating traffic on and use of those highways; and

(2) Assist the department of revenue and the county clerks of the state in the collection of all taxes and revenue going to the state, and in the enforcement of all laws relating to same.

History.
Acts 1929 (Ex. Sess.), ch. 25, §§ 3, 4; Code 1932, § 11462; impl. am. Acts 1937, ch. 33, § 44; impl. am. Acts 1939, ch. 11, §§ 10, 27; impl. am. Acts 1945, ch. 28, §§ 1-3; C. Supp. 1950, § 11462; Acts 1951, ch. 256, § 2; impl. am. Acts 1959, ch. 9, §§ 3, 14; impl. am. Acts 1972, ch. 829, § 7; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 4-703.

Cross-References.
Enforcement of liquor laws, § 57-3-412.
Grounds for arrest by an officer without a warrant, § 40-7-103.
Powers of department of safety, § 4-3-2003.

4-7-105. Enforcement of motor carrier laws.

The members of the Tennessee highway patrol have jurisdiction and authority to make such investigation of operators of motor vehicles for hire as

they may see fit to ascertain whether or not they are operating in compliance with § 65-15-109, and whether or not they are otherwise complying with the law relating to such operators, and they have authority to make arrests for any violation of title 65, chapter 15, or of any other traffic law of the state.

History.
Acts 1931, ch. 79, § 1; C. Supp. 1950, § 11463.2; impl. am. Acts 1955, ch. 69, § 1; T.C.A. (orig. ed.), § 4-704; Acts 1995, ch. 305, § 69.

Code Commission Notes. Former § 4-7-105(a), concerning requiring operators of motor vehicles for hire to apply to the department of safety for a certificate of convenience and necessity, was deemed obsolete by the code commission in 2005.

4-7-106. Enforcement of animal disease laws.

(a) The Tennessee highway patrol is granted the further authority, and it is its duty, to enforce title 44, chapter 2, part 1, relative to the prevention of the spread of communicable diseases among domestic animals and protection to the livestock industry.

(b) The Tennessee highway patrol is granted the same authority and police power to enforce title 44, chapter 2 as is vested in the commissioner of agriculture and in the state veterinarian by title 44, chapter 2.

(c) Any fines assessed and collected under title 44, chapter 2, part 1 in arrests made by the Tennessee highway patrol shall be divided, one-half (½) to the department of agriculture and one-half (½) to the Tennessee highway patrol.

History.
Acts 1939, ch. 41, §§ 1, 2; C. Supp. 1950, § 11462; T.C.A. (orig. ed.), § 4-705.

4-7-107. Powers of members — Age — Uniforms — Protective vests.

(a) The members of the Tennessee highway patrol are clothed with all such necessary police powers as will enable them properly to perform their duties, as outlined and defined in §§ 4-7-104 — 4-7-106, including the right to make arrests and the right to serve criminal warrants and subpoenas for witnesses. The fees taxed to them for arrests and service of warrants only for violations of the laws of the road and violations of the revenue laws of the state, and subpoenas are to be paid over to the commissioner of safety, and then to be transmitted to the state treasurer to be credited to the general fund of this state, and such funds as may be necessary for the operation of the Tennessee highway patrol shall be made available through appropriation by the general assembly.

(b) Each patrol officer appointed shall be at least eighteen (18) years of age.

(c) All members of the Tennessee highway patrol when on duty shall wear a uniform to be designated by the commissioner of safety and shall be provided with a bullet-proof or protective vest for wear in hazardous situations.

(d) All members of the Tennessee highway patrol shall be provided with training in proper procedures to respond to persons with mental illnesses.

History.
Acts 1929 (Ex. Sess.), ch. 25, § 5; Code 1932, § 11463; impl. am. Acts 1937, ch. 33, § 44; impl. am. Acts 1939, ch. 11, §§ 10, 27; impl. am.

Acts 1945, ch. 28, §§ 1-3; C. Supp. 1950, § 11463; Acts 1951, ch. 256, § 2; 1963, ch. 274, § 1; impl. am. Acts 1971, ch. 162, § 3; modified; T.C.A. (orig. ed.), § 4-706; Acts 1984, ch. 927, § 1; 2007, ch. 259, § 1.

Cross-References.
Training to respond to mentally ill persons, § 38-8-119.

Law Reviews.
The Tennessee Law of Arrest (Rollins M. Perkins and Frank C. Rand), 2 Vand. L. Rev. 509 (1949).

4-7-108. Carrying pistol.

It is lawful for Tennessee highway patrol officers employed by the Tennessee highway patrol to wear or carry a pistol at such times as they are in uniform and on active duty, in like manner as the city or metropolitan police officers.

History.
Acts 1931, ch. 62, § 1; mod. C. Supp. 1950, § 11463.1; T.C.A. (orig. ed.), § 4-707.

4-7-109. Temporary retention of disabled member on payroll.

(a) Whenever a commissioned member of the department of safety is injured in the line of duty and such injury disables the member from performing the member's regular duties, whether such disability is temporary or permanent, it is lawful for the commissioner of safety, in the commissioner's sound discretion and with the approval of the governor and the attorney general and reporter, to retain such injured disabled member of the department upon the regular payroll of the department until such member's claim for compensation for such disability is determined by the division of claims and risk management.

(b)(1) The discretionary authority granted to the commissioner in subsection (a) with respect to commissioned members of the department shall also extend in like manner to the department's driver license examiners who are injured and disabled in the line of duty.

(2) In any recovery from, or settlement with, a third party made by such driver license examiners where the state receives any part of such recovery in compensation for payments made under this subsection (b), the state shall pay a pro rata share, based on the percentage of the recovery it receives, of any attorney fees paid or agreed to by the driver license examiner to secure such settlement or recovery.

History.
Acts 1953, ch. 139, § 1 (Williams, § 11463.3); Acts 1977, ch. 20, § 1; T.C.A. (orig. ed.), § 4-710; Acts 1984, ch. 972, § 19(l); 1987, ch. 88, § 1; 2017, ch. 271, § 1.

Cross-References.
Temporary retention of disabled correctional officer or youth service worker, § 4-6-148.

4-7-110. Retired commission card — Retention of service weapon and badge by retired members.

(a) Any commissioned member of the department of safety, who performs honorably and retires from the department in good standing, as determined solely by the commissioner, shall be issued by the department a retired

commission card, which shall identify the member, the member's department and rank, and the fact that the member is retired. The card shall bear the inscription, in print of equal or larger size than the rest of the printing on the card, the words "Not a handgun permit."

(b)(1) A commissioned member, who is issued a retired commission card pursuant to subsection (a), may retain the member's service weapon and badge in recognition of the member's years of good and faithful service; provided, that the member retires:

(A) After twenty-five (25) or more years of service;

(B) After twenty (20) or more years of service, as a result of disability; or

(C) Upon attaining the mandatory retirement age imposed in title 8, chapter 36.

(2) A commissioned member, who is issued a retired commission card pursuant to subsection (a) but who is not included within subdivision (b)(1), may retain the member's service weapon and badge in recognition of the member's years of good and faithful service; provided, that the member reimburses the department for the cost of the service weapon and badge.

(3) Nothing in this subsection (b) shall be construed to require the department to purchase additional service weapons.

(c) Each badge retained pursuant to subsection (b) shall be permanently marked to indicate the retired status of the commissioned member.

(d)(1) Notwithstanding any other law to the contrary, if a commissioned member of the department of safety dies or is killed in the line of duty, the department shall be authorized to present the member's service weapon to the member's surviving spouse or children, or, if the member had no spouse or children, to the member's parents.

(2) If the surviving child or children are under twenty-one (21) years of age, the service weapon shall be given into the custody of the child's legal guardian to be held until the child or eldest surviving child attains twenty-one (21) years of age.

(3) If the surviving spouse, child or children, surviving parents or legal guardian of such person is not eligible to possess a firearm under federal or state law, the department shall not present the service weapon to them.

History.

Acts 1974, ch. 710, § 1; 1976, ch. 718, § 1; T.C.A., § 4-714; Acts 1982, ch. 657, § 1; 1987, ch. 88, § 2; 1996, ch. 675, § 2; 2009, ch. 147, § 1; 2010, ch. 753, § 1; 2011, ch. 444, § 1; 2012, ch. 903, § 1.

Code Commission Notes. Former subdivision (a)(4), concerning commissioned members who retired prior to April 15, 1987, was deleted as obsolete by the code commission in 1991.

Cross-References.

Written directive and permit to carry handguns, § 39-17-1315.

4-7-111. Longevity pay.

(a) In addition to all other salary benefits otherwise payable, every commissioned member of the department of safety shall be paid longevity pay according to the following schedule:

(1) First through the fifth year — none;

(2) Beginning with the month following the fifth anniversary of the

member's employment, the sum of five dollars ($5.00) per month times the member's total years of service.

(b) The longevity pay provided for in subsection (a) shall not be in lieu of merit raises, step increases or cost of living increases, but shall be in addition to all such increases.

(c) It is hereby declared to be the legislative intent to reward experience and faithful service to the state and to encourage career law enforcement officers to remain in service to the state.

(d) In addition to the five dollars ($5.00) per month longevity payment authorized in subsection (a), each eligible employee shall receive a longevity payment supplement in the amount of fifteen dollars ($15.00) per year for each year of creditable service with the Tennessee highway patrol for the first fifteen (15) years of service only.

(e) Funds required to fund this section are hereby directed to be from the 1977 increase in driver license fees.

History.
Acts 1977, ch. 341, §§ 2, 3; T.C.A., § 4-715; Acts 1982, ch. 875, § 4.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-7-112. Rules and regulations — Expenses of patrol.

(a) The commissioner of safety is charged with the proper administration of this part, and may make such rules and regulations relating thereto as may be necessary.

(b) The expenses of carrying out this part, including the compensation of the members of the Tennessee highway patrol, and their necessary expenses incurred in the performance of their duties, shall be paid out of the motor vehicle fund; provided, that such expenses and compensation shall not exceed ten percent (10%) of such fund per annum; and provided further, that only the net amount of the motor vehicle fund shall be subject to allocation between the department of transportation and the various counties.

History.
Acts 1929 (Ex. Sess.), ch. 25, § 6; Code 1932, § 11464; impl. am. Acts 1937, ch. 33, § 44; impl. am. Acts 1939, ch. 11, §§ 10, 27; Acts 1939, ch. 174, § 1; impl. am. Acts 1945, ch. 28, §§ 1-3; C. Supp. 1950, § 11464; Acts 1951, ch. 256, § 2; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1972, ch. 829, § 7; T.C.A. (orig. ed.), § 4-711.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Cross-References.
Payment of allowance into tax administration fund, § 67-1-104.

Law Reviews.
An Examination of the Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339 (1948).

4-7-113. Construction of part.

(a) This part is necessary to:
(1) Protect the lives and safety of the traveling public on state highways;
(2) Conserve and preserve the state's property; and
(3) Assist in the collection of state revenues.

(b) This part is remedial in nature and shall be construed liberally.

History.
Acts 1929 (Ex. Sess.), ch. 25, § 7; Code 1932, § 11465; T.C.A. (orig. ed.), § 4-712.

4-7-114. Enforcement of anti-theft laws.

(a) The members of the Tennessee highway patrol have jurisdiction and authority, and it is their duty, to aid in the enforcement of the criminal provisions of title 55, chapter 5 and § 39-14-103, whenever an alleged violation of those statutory provisions involves unlawful taking of a motor vehicle.

(b) Members of the highway patrol have authority to investigate and to make arrests for violations of such statutory provisions whenever an alleged violation involves unlawful taking of a motor vehicle.

History.
Acts 1980, ch. 884, § 3; 1996, ch. 675, § 3.

4-7-115. Use of dogs to detect drugs.

The Tennessee highway patrol is authorized to utilize dogs trained to detect marijuana and other illicit substances in its work, as may be desirable and appropriate.

History.
Acts 1983, ch. 120, § 2.

4-7-116. [Reserved.]

4-7-117. Monthly payment to be used for medical care of retired canine in care of highway patrol officer.

(a) When a canine that was utilized in the service of the highway patrol is retired due to age, service-related injury, or any other reason, and the canine is retired to the care and custody of a highway patrol officer, whether active or retired, the department of safety, from funds budgeted to the department through the general appropriations act, shall pay, on a monthly basis, the officer caring for the retired canine the sum of eighty-five dollars ($85.00) to be used exclusively for the medical care of the retired canine.

(b) The officer with custody of the retired canine shall maintain records of all medical treatment provided to the retired canine in the officer's care and custody and, by June 1 of each year, submit a copy of these medical records to the department of safety for the fiscal year ending at the end of that month.

(c) Within thirty (30) days of the death of a retired canine in the care of a highway patrol officer, the officer shall notify the department of safety of the canine's death. Upon receiving notification pursuant to this subsection (c), the monthly medical treatment payments to the officer provided by this section shall cease.

(d) The monthly amount set out in subsection (a) shall be in addition to any amount that is otherwise due and paid to the officer by virtue of salary, retirement, disability, or other reason.

History.
Acts 2017, ch. 426, § 1.

Compiler's Notes.
Former § 4-7-117 (Acts 1987, ch. 178, § 1; 1989, ch. 278, § 23; 1996, ch. 1079, § 16), concerning temporary retention of disabled correctional officer or youth service worker, was transferred to § 4-6-148 by the code commission in 2011.

Acts 2017, ch. 426, § 2 provided that the act, which enacted this section, shall apply to all highway patrol officers taking care and custody of a retiring canine on or after July 1, 2017.

4-7-118. Canine training for highway patrol officers.

(a) Effective August 1, 2003, before a person appointed by the commissioner can become a commissioned member of the highway patrol, such person, as a part of the training for such position, shall complete a course of instruction in animal behavior generally and canine behavior specifically that complies with the requirements of § 38-8-117.

(b) For members of the highway patrol who have completed the animal behavior training course required by subsections (a) and (c), any annual in-service training, required for members of the highway patrol, may also include the animal behavior training course.

(c) Any member of the highway patrol who was employed prior to the time when the course of instruction required by subsection (a) was established and offered shall be required to complete it as part of any annual in-service training required of the highway patrol. Any such member shall have two (2) years from June 15, 2004, to receive the instruction required by subsection (a). Any officer who does not comply with this subsection (c) shall be subject to departmental disciplinary proceedings.

(d) Any member of the highway patrol who completes a course of instruction in animal behavior approved by the POST commission for use as required in § 38-8-117, shall be in compliance with this section.

History.
Acts 2004, ch. 940, § 3.

Compiler's Notes.
Acts 2004, ch. 940, § 1 provided that the act shall be known and may be cited as the "General Patton Act of 2003."

4-7-119. [Reserved.]

4-7-120. Political activity.

No member of the Tennessee highway patrol shall engage in political activity, support or opposition to any candidate, party or measure in any election when on duty or acting in the member's official capacity. When off duty and acting as a private citizen, no member of the Tennessee highway patrol shall be prohibited from engaging in political activity or denied the right to refrain from engaging in political activity.

History.
Acts 2006, ch. 1009, § 7.

Cross-References.
Political activity by law enforcement officers and Tennessee highway patrol officers, § 38-8-310.

4-7-121. Officers trained to enforce federal immigration laws.

Highway patrol officers certified as trained in accordance with a memorandum of understanding between the state of Tennessee and the United States department of homeland security pursuant to § 4-3-2015 are authorized to enforce federal immigration laws while performing within the scope of their authorized duties as state highway patrol officers.

History.
Acts 2007, ch. 165, § 2.

4-7-122. Retired members — Employment by local enforcement agencies.

Notwithstanding any other law to the contrary, retired members of the Tennessee highway patrol are eligible to be employed by local law enforcement agencies; provided, that the retired member meets the certification and firearms training requirements of the local law enforcement agency with which the retired member seeks employment.

History.
Acts 2008, ch. 972, § 1.

PART 2

COMPENSATION

4-7-201. Annual compensation survey.

The commissioner of human resources shall annually conduct a survey of the then current compensation levels of the duty classifications and classes of position in § 4-7-203 in the following adjacent states — Kentucky, Virginia, North Carolina, Georgia, Alabama, Mississippi, Arkansas and Missouri — for the purpose of implementing a revised salary schedule for such duty classifications and classes of position.

History.
Acts 1986, ch. 935, § 1; 2007, ch. 60, § 3.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-7-202. Report of survey.

The commissioner of human resources is directed to annually report on or before September 1, the data and conclusions of the compensation survey to the commissioner of safety, the commissioner of finance and administration, the finance, ways and means committees of the senate and the house of representatives and the office of legislative budget analysis.

History.
Acts 1986, ch. 935, § 2; 2007, ch. 60, § 3; 2010, ch. 1030, § 4.

Code Commission Notes. Former subsection (b), concerning implementation of the initial compensation survey, was deleted as obso-

lete by the code commission in 1991.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-7-203. Corresponding duty classifications and compensation in adjacent states.

(a)(1) The commissioner of human resources shall determine corresponding duty classifications of highway patrol officers or other state officers of the adjacent states who perform the same or similar duties as fully commissioned members employed by the department of safety, and electronic alarms technicians of the division of motor vehicle enforcement. The commissioner shall utilize the duty classifications of such members of the department of safety that were in use on January 1, 1985, to determine the classification and compensation of such members.

(2) This part shall apply to the following members of the department of safety:

(A) Commissioned members of the highway patrol;

(B) Commissioned members of the division of motor vehicle enforcement; and

(C) Electronic alarms technicians of the division of motor vehicle enforcement.

(b) This part shall apply to the commissioned members of the Jerry F. Agee Tennessee law enforcement training academy.

(c) The compensation report shall determine the compensation levels of highway patrol officers or other state officers of the adjacent states who have attained the same or similar class of position, for each of the duty classifications, as the classes of position that were in use on January 1, 1985, to determine the classification and compensation of such members of the department of safety.

History.
Impl. am. Acts 1979, ch. 93, § 1; Acts 1986, ch. 935, § 3; 2006, ch. 1009, §§ 2, 3; 2007, ch. 60, § 3.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-7-204. Establishment of compensation schedule.

(a)(1) The survey shall determine the lowest step in the range in each adjacent state for each class of position in each duty classification, and from such data determine the average compensation paid in the adjacent states for each class of position in each duty classification.

(2) The survey shall establish a ten-step range in each class of position in each duty classification. The amount of average compensation as determined in this section shall equal Step 1 of each class of position in each duty classification.

(3) Step 2 of each class of position in each duty classification shall equal one hundred four and one-half percent (104.5%) of Step 1.

(4) Step 3 of each class of position in each duty classification shall equal one hundred nine and two-tenths percent (109.2%) of Step 1.

(5) Step 4 of each class of position in each duty classification shall equal one hundred fourteen and twelve hundredths percent (114.12%) of Step 1.

(6) Step 5 of each class of position in each duty classification shall equal one hundred nineteen and one-quarter percent (119.25%) of Step 1.

(7) Step 6 of each class of position in each duty classification shall equal one hundred twenty-four and sixty-two hundredths percent (124.62%) of Step 1.

(8) Step 7 of each class of position in each duty classification shall equal one hundred thirty and twenty-three hundredths percent (130.23%) of Step 1.

(9) Step 8 of each class of position in each duty classification shall equal one hundred thirty-six and nine hundredths percent (136.09%) of Step 1.

(10) Step 9 of each class of position in each duty classification shall equal one hundred forty-two and twenty-one hundredths percent (142.21%) of Step 1.

(11) Step 10 of each class of position in each duty classification shall equal one hundred forty-eight and sixty-one hundredths percent (148.61%) of Step 1.

(b)(1) In determining the compensation paid in each adjacent state for each class of position in each duty classification, the survey shall not include any employment benefits other than direct compensation, and shall not include any longevity pay unless such pay is a normal part of the monthly base pay schedule.

(2) In determining the compensation paid in each adjacent state for each class of position for the duty classifications within the division of motor vehicle enforcement, the survey shall not include any personnel from an adjacent state who are not commissioned members of a state organization, regardless of any similarity of duties, and shall not include any personnel from an adjacent state who are commissioned members of a state police or highway patrol organization.

History.
Acts 1986, ch. 935, § 4; 1987, ch. 245, § 1.

4-7-205. Implementation of salary schedule.

(a) The salary schedule determined by the most recent compensation survey shall be implemented by the commissioners of human resources and finance and administration in the next fiscal year, subject only to availability of appropriations.

(b) In each fiscal year all funds appropriated in the general appropriations act and allocated for the salaries of fully commissioned members of the department of safety and electronic alarms technicians of the division of motor vehicle enforcement shall be first used to implement the compensation survey. To the extent of any remaining funds, the general assembly, upon the recommendations of the department of human resources, shall provide for the expenditure of such funds.

(c)(1) No adjustment arising from the survey provided for in this part or the salary schedule determined by the survey shall take effect until such adjustment is funded in the general appropriations bill.

(2) The payment of such adjustment or increase in the salary schedule is conditioned upon such adjustment or increase being funded in the general appropriations bill.

History.
Acts 1986, ch. 935, § 5; 1987, ch. 245, § 2; 2007, ch. 60, § 3.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-7-206. Duty classifications for initial implementation.

(a) For implementation purposes in the initial fiscal year of the compensation survey, the fully commissioned members of each duty classification in the Jerry F. Agee Tennessee law enforcement training academy shall be paid in accordance with the following schedule for the proper class of position:

(1) Newly hired members and those with less than one (1) year service in like class of position shall be at Step 1;

(2) Members with more than one (1) year but less than two (2) years' service in like class of position shall be at Step 2;

(3) Members with more than two (2) years' but less than three (3) years' service in like class of position shall be at Step 3;

(4) Members with more than three (3) years' but less than four (4) years' service in like class of position shall be at Step 4;

(5) Members with more than four (4) years' but less than five (5) years' service in like class of position shall be at Step 5;

(6) Members with more than five (5) years' but less than six (6) years' service in like class of position shall be at Step 6;

(7) Members with more than six (6) years' but less than seven (7) years' service in like class of position shall be at Step 7;

(8) Members with more than seven (7) years' but less than eight (8) years' service in like class of position shall be at Step 8;

(9) Members with more than eight (8) years' but less than nine (9) years' service in like class of position shall be at Step 9; and

(10) Members with more than nine (9) years' service in like class of position shall be at Step 10.

(b) For implementation purposes in the initial fiscal year of the compensation survey, the fully commissioned members of each duty classification in the department of safety, and electronic alarms technicians of the division of motor vehicle enforcement, except members of the Jerry F. Agee Tennessee law enforcement training academy, shall be paid in accordance with each member's present step in class of position as of June 30, 1986, and each such member shall receive one (1) additional step in class of position on July 1, 1986, not to exceed ten (10) steps.

(c) For implementation purposes in each subsequent fiscal year of the compensation survey, all fully commissioned members of each duty classification in the department of safety, and electronic alarms technicians of the

division of motor vehicle enforcement shall receive one (1) additional step in class of position on each July 1, not to exceed ten (10) steps.

(d) For implementation purposes in each fiscal year of the compensation survey, the following duty classifications shall be paid the same as the duty classification deemed its equivalent, for like years of service:

(1) A technician 3 in the highway patrol shall be equivalent to a sergeant in the highway patrol;

(2) A technician supervisor in the highway patrol shall be equivalent to a lieutenant in the highway patrol; and

(3) An electronic alarms technician in the division of motor vehicle enforcement shall be equivalent to a sergeant in the division of motor vehicle enforcement.

(e) For implementation purposes in each fiscal year of the compensation survey, for fully commissioned members of the department of safety, and communications technicians of the department of safety, any length of service in the highway patrol at a comparable or a higher rank, any length of service in the Jerry F. Agee Tennessee law enforcement training academy at the same or a higher rank and any length of service in the division of motor vehicle enforcement at the same or a higher rank shall be included in computing a member's years of service.

History.
Impl. am. Acts 1979, ch. 93, § 1; Acts 1986, ch. 935, § 6; 1987, ch. 375, § 1.

4-7-207. Promotions.

Any promotion to a higher class of position shall result in a minimum increase of compensation of at least five percent (5%), notwithstanding § 4-7-206.

History.
Acts 1986, ch. 935, § 7.

4-7-208. Determination of compensation for each step.

For implementation purposes of the compensation survey in fiscal year 1988-1989, and in all subsequent fiscal years, the average compensation for each class of position in each duty classification shall be determined in accordance with § 4-7-204(a)(1). All other steps shall be computed in accordance with § 4-7-204(a).

History.
Acts 1986, ch. 935, § 10.

Code Commission Notes. Former subsections (a) and (b), concerning implementation of compensation surveys in fiscal years prior to 1988, were deleted as obsolete by the code commission in 1991.

4-7-209. Suspension of step schedules.

(a) Implementation of salary increases pursuant to this part based on step schedules shall be suspended for the fiscal years beginning July 1, 2003, and ending June 30, 2004, and beginning July 1, 2009, and ending June 30, 2010.

In the fiscal years beginning July 1, 2004, and July 1, 2010, and in subsequent fiscal years, salary increases pursuant to this part based on step schedules shall not include time of service between July 1, 2003, and June 30, 2004, nor between July 1, 2009, and June 30, 2010.

(b) The salary increase provided by this part and suspended by subsection (a) for the period July 1, 2003, through June 30, 2004, shall be reinstated effective July 1, 2017. For purposes of determining the appropriate salary classification pursuant to this part, credible service for the time period of July 1, 2003, through June 30, 2004, shall be included.

History.
Acts 2003, ch. 355, § 2; 2009, ch. 531, § 20; 2017, ch. 461, § 5.

Compiler's Notes.
Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

PART 3

LITTER PREVENTION AND CONTROL LAW

4-7-301. Short title.

This part shall be known and may be cited as the "Litter Prevention and Control Law."

History.
Acts 1988, ch. 1007, § 1.

Cross-References.
Litter control, title 39, ch. 14, part 5.

4-7-302. Creation of special unit.

(a) There is created within the Tennessee highway patrol a special unit for the enforcement of the Litter Control Law, compiled in title 39, chapter 14, part 5. The unit shall consist of a minimum of eight (8) members of the highway patrol. Such members shall be stationed in equal numbers in the eight (8) highway patrol districts.

(b) Sections 4-7-102, 4-7-103, 4-7-107 — 4-7-112, and 4-7-201 — 4-7-208 shall apply to the members authorized in subsection (a).

History.
Acts 1988, ch. 1007, § 2; 1996, ch. 675, § 4.

4-7-303. Jurisdiction, authority and duty.

The members of the special unit created by this part have jurisdiction and authority, and it is their duty, to enforce the Litter Control Law, compiled in title 39, chapter 14, part 5. Such jurisdiction shall include all public roads, highways, rights-of-way, waters and property.

History.
Acts 1988, ch. 1007, § 2; 1996, ch. 675, § 5.

4-7-304. Reporting of violations — Prosecutions.

The special unit created by this part shall encourage citizens to report violations of the Litter Control Law, compiled in title 39, chapter 14, part 5, and to prosecute offenders. If a citizen reports a violation of such law and declines to prosecute, the special unit shall notify the suspected offender by letter of the provisions of the Litter Control Law of 1971 and penalties for violation thereof.

History.
Acts 1988, ch. 1007, § 2; 1996, ch. 675, § 6.

4-7-305. Training — Rules and regulations.

The commissioner of safety shall provide for appropriate training for members of the special unit created by this part. The commissioner may promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, to implement this part.

History.
Acts 1988, ch. 1007, § 2.

4-7-306. Citizen cooperation.

The special unit created by this part shall encourage the citizens of this state to cooperate with the department in preventing and controlling violations of the Litter Control Law, compiled in title 39, chapter 14, part 5. Such unit shall develop programs to accomplish such cooperation, including, but not limited to, "litter watch" programs.

History.
Acts 1988, ch. 1007, § 2; 1996, ch. 675, § 7.

PART 4

CRIMINAL INVESTIGATION DIVISION

4-7-401. Creation.

There is created the criminal investigation division within the Tennessee highway patrol, referred to as "CID" in this part.

History.
Acts 2006, ch. 879, § 1.

4-7-402. Purpose — Jurisdiction.

(a) The mission of the CID shall be to investigate, gather evidence and assist federal, state and local law enforcement in the prosecution of criminal offenses enumerated in § 4-7-404(3).

(b) The CID shall have original jurisdiction to enforce title 55, chapter 5, relative to automobile anti-theft, odometer and fraud prevention, as well as all criminal matters initiated by the highway patrol or other divisions of the department of safety, including, but not limited to, the investigation of

vehicular homicides, vehicular assaults and traffic crashes involving death or serious bodily injury.

History.
Acts 2006, ch. 879, § 1.

4-7-403. Staffing.

The CID shall be staffed in an appropriate and professional manner to carry out its duties and functions. Such staffing shall be in the discretion of the commissioner of safety.

History.
Acts 2006, ch. 879, § 1.

4-7-404. Authority.

Members of the CID shall have the authority to:

(1) Provide investigative and technical support to the highway patrol in all criminal matters initiated by their actions;

(2) Provide investigative and technical support to the driver license division of the department of safety;

(3) Conduct overt and covert criminal investigations relating to:

(A) Motor vehicle and motorized vehicle theft;

(B) Stolen motor vehicles and motorized vehicle parts;

(C) Stolen boats, airplanes and parts therefrom;

(D) Violation of title and registration laws and operation of chop shops in title 55, chapter 5;

(E) Identify theft laws;

(F) Odometer fraud;

(G) Vehicular homicides;

(H) Vehicular assault; and

(I) Insurance fraud related to motor vehicles; and

(4) Provide technical and investigative support to the internal affairs division of the department of safety.

History.
Acts 2006, ch. 879, § 1.

4-7-405. Assisting the TBI.

The CID may also assist the Tennessee bureau of investigation (TBI) in any other criminal investigations not specified in § 4-7-404, upon written request by the director of the TBI and approval of the commissioner of safety.

History.
Acts 2006, ch. 879, § 1.

CHAPTER 8

STATE CAPITOL AND ANNEXES

Part 1. Capitol Grounds and Annexes

Section
4-8-101. Care of buildings and fixtures — Preservation of order — Virtual tour.
4-8-102. Superintendence of deliveries and shipments.
4-8-103. Capitol employees.
4-8-104. Police powers of security guards.
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Part 2. Capitol Parking

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4-8-202. Marking of parking space.
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4-8-204. Car pool section parking — Designation of area.
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Part 3. State Capitol Commission

4-8-301. Established — Membership — Chair — Compensation.
4-8-302. Powers and duties.
4-8-303. Staff — Experts.
4-8-304. Reports.
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Part 4. David Crockett Commission

4-8-401. Creation — Purpose.
4-8-402. Composition of commission.
4-8-403. Consultation with state capitol commission — Approval of design — Location for placement.
4-8-404. David Crockett commission fund — Exhaustion of private funds before use of state funds.
4-8-405. Report on operation and accomplishments — Termination of commission.

PART 1

CAPITOL GROUNDS AND ANNEXES

4-8-101. Care of buildings and fixtures — Preservation of order — Virtual tour.

(a)(1) Except as otherwise provided by subdivision (a)(2), it is the duty of the department of general services, through the commissioner, to take care of and preserve the state capitol and capitol annexes and all the furniture, fixtures and the capitol grounds, and to keep the same in good order.

(2) It is the duty of the department of general services, through the commissioner acting with approval of the speaker of the senate and the speaker of the house of representatives, to take care of and preserve the second floor of the state capitol, including all chambers, galleries, offices, rooms, hallways, balconies, storage areas and other spaces therein, and all associated furniture and fixtures and to keep the same in good order.

(b) The secretary of state is authorized to produce a virtual tour of the state capitol, capitol annexes and grounds and to publish the virtual tour on the websites of the general assembly and of the secretary of state. The secretary of state may reproduce the virtual tour on electronic media. The secretary of state

is further authorized, acting through the state librarian and archivist, to distribute to any public or private elementary, middle, junior high or senior high school the virtual tour on electronic media.

(c) The department, through proper agencies, has the authority to preserve order among visitors who may be in and around the capitol and annexes, and to keep improper persons out of the different offices and rooms, in the absence of the regular occupants.

History.

Acts 1899, ch. 198, § 2; Shan., § 301; impl. am. Acts 1923, ch. 7, §§ 1, 33, 34; Code 1932, § 419; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-801; Acts 2010, ch. 1062, § 2; 2012, ch. 557, § 1.

Cross-References.

State capitol commission, title 4, ch. 8, part 3.

Uncodified public acts relating to public buildings, Index to Uncodified Public Chapters, Volume 16.

Attorney General Opinions.

The general assembly does not need to enact legislation authorizing the prohibition of smoking in the Capitol building because authority to establish a smoking policy already exists; however, it may enact legislation to modify existing statutes, OAG 03-099, 2003 Tenn. AG LEXIS 115 (8/13/03).

4-8-102. Superintendence of deliveries and shipments.

The department of general services shall superintend the delivery of supplies of fuel, water and stationery for the different departments of the state government, the delivery of all necessary dispatches and communications, and the packing and shipments of the acts, journals and other public documents.

History.

Acts 1899, ch. 198, § 3; Shan., § 302; impl. am. Acts 1923, ch. 7, §§ 1, 33, 34; Code 1932, § 420; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-802; modified.

Cross-References.

Central mailing room for all state departments, institutions and agencies located at the state capitol maintained by department of general services, § 4-3-1105.

4-8-103. Capitol employees.

(a) The commissioner of general services is authorized to appoint one (1) or more security guards for the capitol and capitol grounds, who shall receive for services the sums appropriated, and one (1) or more porters, who shall receive the sums appropriated.

(b) The commissioner may also appoint a landscape gardener to perform such duties in connection with the care of the grounds as may from time to time be necessary.

History.

Acts 1899, ch. 198, § 4; Shan., § 303; impl. am. Acts 1923, ch. 7, §§ 1, 33, 34; mod. Code 1932, § 421; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-803.

Cross-References.

State capitol commission staff, § 4-8-303.

4-8-104. Police powers of security guards.

(a) The security guards are vested with police powers.

(b) It is their duty to arrest any and all persons committing nuisances or misdemeanors in or around the capitol, annexes, or on the grounds, or for other violation of law, and take such offender or offenders before some magistrate for trial and punishment.

History.
Acts 1899, ch. 198, § 5; Shan., § 304; mod. Code 1932, § 422; T.C.A. (orig. ed.), § 4-804.

Cross-References.
Disorderly conduct in a public place, penalty, § 39-17-305.

4-8-105. Supervision of porters.

The commissioner of general services has general supervision and control of all porters appointed or employed at the expense of the state in connection with any and all of the departments in and about the capitol.

History.
Acts 1899, ch. 198, § 7; Shan., § 304a1; impl. am. Acts 1923, ch. 7, §§ 1, 33, 34; Code 1932, § 423; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-805.

PART 2

CAPITOL PARKING

4-8-201. Rules and regulations.

(a) The governor is hereby authorized to promulgate rules and regulations governing the parking of motor vehicles on the state-owned property known as Capitol Hill and immediately surrounding the state capitol at Nashville. The office of the chief clerk of the senate and the office of the chief clerk of the house of representatives shall each be assigned a minimum of six (6) parking spaces pursuant to such rules and regulations; and the chief clerk of the senate and the chief clerk of the house of representatives shall jointly possess exclusive custody, control and direction of any parking spaces developed and constructed, after January 1, 2001, on the right side of the drive on Capitol Hill up to the state capitol.

(b) Such rules and regulations when promulgated shall be enforced by the commissioner of general services, in the manner provided in this part.

History.
Acts 1951, ch. 131, § 1 (Williams, § 423a); modified; Acts 1955, ch. 219, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-807; Acts 2004, ch. 736, § 1; 2010, ch. 1062, § 3.

Cross-References.
Out-of-state tourists, applicability, § 4-8-203.
Responsibility for illegal parking, § 55-8-186.

4-8-202. Marking of parking space.

Such parking space as exists on Capitol Hill shall be marked and defined under the rules and regulations promulgated by the governor, with due regard to safety and the orderly operation of the business of this state.

History.
Acts 1951, ch. 131, § 2 (Williams, § 423a); T.C.A. (orig. ed.), § 4-808.

Cross-References.
Out-of-state tourists, applicability, § 4-8-203.

4-8-203. Violation of parking or traffic regulations.

(a)(1) Any person found guilty of violation of the parking or traffic regula-

tions promulgated under §§ 4-8-201 and 4-8-202 is subject to a civil penalty of ten dollars ($10.00) for the first offense, and twenty-five dollars ($25.00) for second and subsequent offenses during a one-year period.

(2) Any person who is found guilty of four (4) or more violations during a one-year period shall have any state-issued parking permit revoked for a period of one (1) year from the date of the last violation.

(3) This section shall also apply to parking violations in the state employee parking lots described in § 4-3-1105, and to parking on any other property under state control.

(4) Sections 4-8-201, 4-8-202 and this section shall not apply to tourists with out-of-state auto tags.

(b)(1) The commissioner of safety, or the commissioner's designee, shall conduct a hearing if the person charged with the violation so desires.

(2) The hearing date shall be posted on the citation issued, and will be no less than fifteen (15), nor more than thirty-five (35), calendar days from the date of issuance.

(3) Persons charged who do not desire a hearing may plead guilty to the charge by remitting the assessed civil penalty to the address on the citation.

(4) At each such hearing, the state shall have the burden of proving the subject vehicle was in violation of the parking or traffic regulations promulgated under §§ 4-8-201 and 4-8-202, and failure to carry such burden shall be cause for dismissal of the case.

(c) As provided in §§ 55-8-186 and 55-10-312, the proof of registration shall create the presumption the vehicle was operated by the owner or with the owner's knowledge and consent. It is the responsibility of the registered owner of the vehicle to provide the commissioner with sworn evidence that the vehicle was not being used by the owner, and provide the name, address and driver license number of the person in control of the vehicle at the time of the violation. If the owner fails to provide such information, then the owner shall become personally liable for the violation.

(d)(1) Failure of the person to appear on, or remit the civil penalty by, the hearing date shall result in notice being mailed to the address of the registered owner of the vehicle.

(2) The notice shall set forth a date for the owner to appear and present the information required in subsection (c).

(e)(1) Failure of the registered owner, or the person who was in control of the vehicle on the date of the violation, to either appear for the scheduled hearing or remit the civil penalty shall cause the vehicle to be subject to immobilization.

(2) If the vehicle is again found in violation, the vehicle will be immobilized by the department until such time as all outstanding civil penalties are paid by the owner.

(f) It is the responsibility of the department to maintain records of all vehicles issued citations for violation of this chapter.

(g) Any person aggrieved by a decision of the commissioner, or the commissioner's designee, may appeal in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 1951, ch. 131, § 3 (Williams, § 423a); modified; Acts 1955, ch. 219, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 543, §§ 5, 8; T.C.A. (orig. ed.), § 4-809; Acts 1990, ch. 917, § 1; 2001, ch. 109, § 2.

4-8-204. Car pool section parking — Designation of area.

There shall be reserved a priority section of a sufficient number of parking spaces in the Capitol Hill state employees parking lot to accommodate those who wish to participate in the car pool program. The area shall be designated the "car pool section" to be used solely for car pool priority parking for state employees; however, unused parking spaces in the car pool section may be released at an appropriate time for use by other state employees.

History.
Acts 1976, ch. 409, § 1; T.C.A., § 4-811.

4-8-205. Car pool section parking — Eligibility — Applications.

(a) State employees desiring to take advantage of car pool section parking shall be required to execute a signed statement that the employee transports at least two (2) persons to and from work per day and containing the names and addresses of their regular passengers, the state department or office in which they are employed and their addresses, and their home and office telephone numbers. The statement shall also certify that regular passengers are not members of another car pool with a priority parking space.

(b) The application for priority parking used in the state of Tennessee's operation car pool program by the department of general services may be used to carry out this section.

(c) All state employees working in the area of the Capitol Hill complex shall be notified at least once a year of the availability of the car pool program.

(d) The two (2) persons riding in the applicant's car shall all be employees of the state of Tennessee in order to qualify under § 4-8-204 and this section.

History.
Acts 1976, ch. 409, § 2; 1979, ch. 31, § 1; modified; T.C.A., § 4-812; Acts 2009, ch. 148, §§ 1, 2.

4-8-206. Van section parking.

(a) There shall be reserved a priority section of a sufficient number of parking spaces in the Capitol Hill state employees parking lot to accommodate those vans in which several state employees are commuting. The area shall be designated "van section" and used solely for van priority parking for state employees; however, unused parking spaces in the van section may be released at an appropriate time for use by other state employees.

(b) The commissioner of general services shall develop and issue a policy or rule, as the commissioner deems appropriate, governing the vans and the state employees who may use van priority parking. Such policy or rule shall set eligibility requirements for the employees and the motor vehicles that may use such parking.

History.
Acts 1980, ch. 724, § 1; 1992, ch. 627, § 1.

PART 3

STATE CAPITOL COMMISSION

4-8-301. Established — Membership — Chair — Compensation.

(a)(1) There is hereby created the state capitol commission, which shall be composed of seven (7) ex officio members, as follows: the commissioner of general services, the comptroller of the treasury, the secretary of state, the state treasurer, the commissioner of finance and administration, the commissioner of environment and conservation, and the chair of the Tennessee historical commission, or their respective designees. In addition, the membership shall include two (2) legislative members as follows: one (1) member appointed by the speaker of the senate and one (1) member appointed by the speaker of the house of representatives.

(2)(A) The commission membership shall also include three (3) private citizens appointed by the governor to staggered terms of three (3) years.

(B) In appointing private citizens to serve on the state capitol commission, the governor shall strive to ensure that at least one (1) such citizen serving on the commission is sixty (60) years of age or older and that at least one (1) such citizen serving on the commission is a member of a racial minority.

(C) At least one (1) of the private citizens appointed by the governor shall be a black person.

(D)(i) In appointing private citizens to serve on the state capitol commission, the governor shall appoint one (1) person from each of the three (3) grand divisions of the state.

(ii) The private citizen members serving on the commission on March 20, 2012, shall continue to serve until they either vacate their positions or their terms of office expire, whichever occurs first, whereupon the governor shall appoint persons to fill the positions in accordance with subdivision (a)(2)(D)(i).

(3)(A) The commission membership shall also include one (1) private citizen member to be appointed by the speaker of the senate and one (1) private citizen member to be appointed by the speaker of the house of representatives.

(B) The members appointed under subdivision (a)(3)(A) shall serve terms of three (3) years, with such terms to begin on July 1 and expire on June 30, every three (3) years thereafter.

(b) The governor shall appoint a chair from among the full membership of the commission.

(c) All members shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1986, ch. 838, § 1; 1988, ch. 1013, § 1; 1998, ch. 688, § 2; 2012, ch. 586, § 3; 2020, ch. 768, § 3.

Compiler's Notes.
The state capitol commission, created by this section, terminates June 30, 2026. See §§ 4-29-112, 4-29-247.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-8-302. Powers and duties.

(a) The state capitol commission has the following power and duty to:

(1) Formulate and develop a plenary master plan and program for the adaptive restoration and preservation of the state capitol, including the building and contiguous grounds;

(2) Consistent with the master plan required in subdivision (a)(1), to establish policy controlling the furnishings, including, but not limited to, wall, floor and window coverings of the state capitol;

(3) Establish policy governing maintenance of the state capitol;

(4) Establish policy governing the use of the state capitol for any nongovernmental activities; and

(5) Establish a policy relative to historical commemorative additions and improvements on the Bicentennial Mall, such as statues and monuments, and to approve such historical commemorative additions and improvements as may come with such policy; provided, that all other aspects of the administration of the Bicentennial Mall shall remain within the control and jurisdiction of the department of environment and conservation.

(b) All actions of the commission pursuant to subsection (a) shall be subject to the concurrence of the state building commission.

History.
Acts 1986, ch. 838, § 2; 1998, ch. 688, § 1.

Attorney General Opinions.
The State Capitol Commission may establish a policy that prohibits smoking in the Capitol or permits smoking in certain areas thereof subject to (i) the concurrence of the State Building Commission and (ii) compliance with the requirements of T.C.A. § 4-4-121, OAG 03-099, 2003 Tenn. AG LEXIS 115 (8/13/03).

4-8-303. Staff — Experts.

(a) The department of general services, the state museum, the Tennessee historical society, and the office of the state architect shall provide appropriate staff to the state capitol commission.

(b) In addition, the commission has the authority to contract pursuant to state law for the services of experts and specialists in the area of adaptive restoration and preservation of historic buildings. All contracts shall be executed by the commissioner of finance and administration, with the approval of the comptroller of the treasury and the attorney general and reporter; provided, that design and construction contracts are subject to the approval of the state building commission.

History.
Acts 1986, ch. 838, § 3.

4-8-304. Reports.

The commission shall make an annual written report to the governor and general assembly. The report shall describe the activities of the commission during the preceding twelve (12) months and shall outline the activities for the ensuing twelve (12) months, with recommendations.

History.
Acts 1986, ch. 838, § 4.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-8-305. Monument to unborn children.

(a) The general assembly calls for a monument to be erected on the capitol campus as a reminder of unborn children. The monument shall be in memory of the victims of abortion, babies, women, and men.

(b) One (1) member of the senate and one (1) member of the house of representatives, each appointed by their respective speaker, shall work with the state capitol commission to design and place the monument commissioned pursuant to subsection (a) at a suitable location on the capitol campus.

(c) No state funds shall be spent on the construction or placement of the monument, and the monument must be erected using private funds. The members appointed pursuant to subsection (b) shall perform their duties when in Nashville for other official business.

(d)(1) There is created a separate account within the state general fund to be known as the Tennessee Monument to Unborn Children fund.

(2) The fund must be funded by gifts, grants, and other donations received by the state for the fund from nonstate sources.

(3) Money in the fund may be used for the design, construction, and installation of the monument.

(4) At the end of each fiscal year, the commissioner of finance and administration shall carry forward any amounts remaining in the fund.

(5) Moneys in the fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the fund, and interest accruing on investments of and deposits into such fund must be returned to such fund and remain part of the fund.

(6) After the completion of the monument, any moneys remaining in the fund must remain in the fund and be expended for the upkeep and maintenance of the monument until all monies in the fund are exhausted.

(e) Upon completion of the monument, the state capitol commission shall name the monument the "Tennessee Monument to Unborn Children, In Memory of the Victims of Abortion: Babies, Women, and Men."

History.
Acts 2018, ch. 1057, § 1.

Compiler's Notes.
For the Preamble to the act concerning the Tennessee memorial to unborn children, please see Acts 2018, ch. 1057.

PART 4
DAVID CROCKETT COMMISSION

4-8-401. Creation — Purpose.

There is created the David Crockett commission, hereinafter "the commission," to identify ways and means and raise the necessary funds to erect a monument or statue honoring David Crockett on the grounds of the state capitol as a permanent tribute to one of Tennessee's most prominent citizens throughout its history.

History.
Acts 2012, ch. 1064, § 1.

Compiler's Notes.
For the preamble to the act concerning the creation of the David Crockett commission to oversee the erection of a monument or statue honoring David Crockett, please refer to Acts 2012, ch. 1064.

4-8-402. Composition of commission.

(a) The commission shall be composed of nine (9) citizen members: five (5) members to be appointed by the governor, two (2) members to be appointed by the speaker of the house of representatives, and two (2) members to be appointed by the speaker of the senate. The governor shall designate one (1) member to serve as chair of the commission. Vacancies shall be filled by the original appointing authority. Members of the commission shall not receive travel expenses or compensation for their service; however, members of the commission may receive compensation or reimbursement for travel expenses from private sources.

(b) Of the members appointed to the commission:

(1) One (1) shall be a member of a Tennessee historical society or organization;

(2) One (1) shall be an employee or director of a public museum with experience relative to commissioned projects;

(3) One (1) shall have experience in fundraising for historical, artistic, or educational organizations or projects; and

(4) One (1) shall be a resident of the eastern grand division from an area of David Crockett's birthplace or where he enjoyed his early childhood who is a member of a group that studies or celebrates David Crockett on an ongoing basis.

History.
Acts 2012, ch. 1064, § 2.

Compiler's Notes.
For the preamble to the act concerning the creation of the David Crockett commission to oversee the erection of a monument or statue honoring David Crockett, please refer to Acts 2012, ch. 1064.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-8-403. Consultation with state capitol commission — Approval of design — Location for placement.

(a) The commission shall consult with the state capitol commission relative to all aspects of the monument or statue honoring David Crockett, and the

state capitol commission must give final approval of the design of such monument or statue prior to its erection.

(b) The commission is administratively attached to the department of finance and administration.

(c) Once the design of the monument or statue honoring David Crockett is approved by the state capitol commission and the monument or statue is completed, the monument or statue must be placed on a pedestal above the entrance to the Motlow Tunnel on Dr. Martin Luther King, Jr. Boulevard. If relocation of an existing structure is required, private funds must be used for the relocation, and state funds must not be expended for the relocation of an existing structure.

History.

Acts 2012, ch. 1064, § 3; 2018, ch. 878, § 1; 2021, ch. 175, § 1.

Compiler's Notes.

For the preamble to the act concerning the creation of the David Crockett commission to oversee the erection of a monument or statue honoring David Crockett, please refer to Acts 2012, ch. 1064.

Amendments.

The 2021 amendment added (c).

Effective Dates.

Acts 2021, ch. 175, § 2. April 20, 2021.

4-8-404. David Crockett commission fund — Exhaustion of private funds before use of state funds.

(a) The monument or statue of David Crockett may be erected using a combination of state and private funds. However, it is the general assembly's intent that any available private funding is used to the full extent possible and that no state funds shall be used for such project until all private funding is exhausted.

(b)(1) There is created a separate account within the state treasury to be known as the David Crockett commission fund.

(2) The David Crockett commission fund is composed of:

(A) Funds appropriated by the general assembly for the David Crockett commission fund; and

(B) Gifts, grants, and other donations received by the commission for the David Crockett commission fund from nonstate sources.

(3) Money in the David Crockett commission fund may be used by the commission for the purposes for which the commission was created.

(4) At the end of each fiscal year, the commissioner of finance and administration shall carry forward any amounts remaining in the David Crockett commission fund.

(5) Moneys in the David Crockett commission fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the David Crockett commission fund, and interest accruing on investments and deposits of such fund must be returned to such fund and remain part of the David Crockett commission fund.

(6) After the termination of the commission pursuant to § 4-8-405, any moneys remaining in the David Crockett commission fund must remain in the fund and be expended for the upkeep and maintenance of the monument or statue until all funds in the account are exhausted.

History.
Acts 2012, ch. 1064, § 4; 2018, ch. 878, § 2.

Compiler's Notes.
For the preamble to the act concerning the creation of the David Crockett commission to oversee the erection of a monument or statue honoring David Crockett, please refer to Acts 2012, ch. 1064.

4-8-405. Report on operation and accomplishments — Termination of commission.

Within thirty (30) days of the erection of the monument or statue in accordance with this part, the David Crockett commission shall submit to the governor, the speakers of the senate and the house of representatives, and the chairs of the government operations committees of the house of representatives and senate a complete and detailed report setting forth its operation and accomplishments, at which time the commission shall cease to exist.

History.
Acts 2012, ch. 1064, § 5.

Compiler's Notes.
For the preamble to the act concerning the creation of the David Crockett commission to oversee the erection of a monument or statue honoring David Crockett, please refer to Acts 2012, ch. 1064.

CHAPTER 9

COMMISSION FOR UNIFORM LEGISLATION

Section
4-9-101. Creation — Composition.
4-9-102. Duties.
4-9-103. Record — Reports.
4-9-104. Compensation.

4-9-101. Creation — Composition.

(a) There is created a board of commissioners for the promotion of uniformity of legislation in the United States, composed of three (3) lawyers appointed by the governor, one (1) lawyer appointed by the speaker of the senate, one (1) lawyer appointed by the speaker of the house of representatives, and any former member of the board who has been elected as a life member of the National Conference of Commissioners on Uniform State Laws. Any vacancy on the board by resignation, death, or otherwise arising shall be filled by the appointment of a lawyer by the governor, if the vacant position was initially filled by appointment by the governor, by the speaker of the senate if the vacant position was initially filled by appointment by the speaker of the senate, or by the speaker of the house of representatives, if the vacant position was initially filled by appointment by the speaker of the house of representatives. In making appointments to the board, the governor, the speaker of the senate, and the speaker of the house of representatives shall strive to ensure that the makeup of the board reflects and represents the diversity of persons in this state.

(b) The director of the office of legal services, or the director's designee, shall serve as an associate member of the board and may assist the board in the timely and thorough performance of its duties.

History.
Acts 1909, ch. 86, § 1; Shan., § 3608a117; mod. Code 1932, § 1013; modified; T.C.A. (orig. ed.), § 4-901; Acts 1981, ch. 31, § 3; 1988, ch. 1013, § 2; 2017, ch. 395, § 1.

Compiler's Notes.
The commission for uniform legislation, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Cross-References.
Duties of director of office of legal services, §§ 3-12-101, 3-12-102.

4-9-102. Duties.

It is the duty of the board of commissioners to:

(1) Examine the subjects upon which uniformity of legislation in the various states and territories of the union is desirable, but which are outside the jurisdiction of the congress of the United States;

(2) Confer upon these matters with the commissioners appointed by other states and territories for the same purpose;

(3) Consider and draft uniform laws to be submitted for approval and adoption by the several states; and

(4) Generally advise and recommend such other or further course of action as shall accomplish the purposes of this chapter.

History.
Acts 1909, ch. 86, § 2; Shan., § 3608a118; mod. Code 1932, § 1014; T.C.A. (orig. ed.), § 4-902.

4-9-103. Record — Reports.

The board of commissioners shall keep a record of its transactions, and shall at the session of each general assembly make a report of its doings and of its recommendations to the general assembly.

History.
Acts 1909, ch. 86, § 3; Shan., § 3608a119; mod. Code 1932, § 1015; T.C.A. (orig. ed.), § 4-903.

4-9-104. Compensation.

(a) No member of the board shall receive any compensation for such member's services.

(b) Members, life members, and the associate member of the board shall be entitled to reimbursement for travel expenses incurred in attending an annual conference of the National Conference of Commissioners on Uniform State Laws, which shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1909, ch. 86, § 4; Shan., § 3608a120; Code 1932, § 1016; Acts 1976, ch. 806, § 1(43); T.C.A. (orig. ed.), § 4-904; Acts 2017, ch. 395, § 2.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

CHAPTER 10

COMMISSION ON INTERGOVERNMENTAL RELATIONS

Section
4-10-101. Legislative findings.
4-10-102. Advisory commission on intergovernmental relations — Creation.
4-10-103. Members — Appointment — Officers — Terms — Quorum.
4-10-104. Duties.
4-10-105. Meetings — Committees — Rules of procedure.
4-10-106. Staff assistance.
4-10-107. Compensation — Appropriations.
4-10-108. Reports.
4-10-109. Inventory of public infrastructure needs.
4-10-110. Effect of tax abatements or reductions on local public education.
4-10-111. Study on titling of boats.
4-10-112. Monitoring of current wholesale power supply arrangements between the TVA and municipal utilities and electric cooperatives.
4-10-113. Report update on broadband service.
4-10-114. Tax credits for shippers — Definitions — Study — Report.
4-10-115. Comprehensive evaluation on the socioeconomic impact of childhood obesity.

4-10-101. Legislative findings.

The general assembly finds and declares that there is a need for a permanent intergovernmental body to study and report on:

(1) The current pattern of local governmental structure and its viability;

(2) The powers and functions of local governments, including their fiscal powers;

(3) The existing, necessary and desirable relationships between and among local governments and the state;

(4) The existing, necessary and desirable allocation of state and local fiscal resources;

(5) The existing, necessary and desirable roles of the state as the creator of the local governmental systems;

(6) The special problems in interstate areas facing their general local governments, intrastate regional units, and areawide bodies, such studies where possible to be conducted in conjunction with those of a pertinent sister state commission; and

(7) Any constitutional amendments and statutory enactments required to implement appropriate commission recommendations.

History.
Acts 1978, ch. 939, § 1; T.C.A., § 4-1001.

Cross-References.
Office of local government, title 4, ch. 16.

4-10-102. Advisory commission on intergovernmental relations — Creation.

There is hereby created the Tennessee advisory commission on intergovernmental relations.

History.
Acts 1978, ch. 939, § 2; T.C.A., § 4-1002.

Compiler's Notes.
The Tennessee advisory commission on intergovernmental relations, created by this section, terminates June 30, 2029. See §§ 4-29-112, 4-29-250.

4-10-103. Members — Appointment — Officers — Terms — Quorum.

(a) Beginning July 1, 1997, the commission shall be composed of the following twenty-five (25) members; provided, that the membership may exceed this number until the appropriate terms of office have expired as provided in this section:

(1) The chair of the senate finance, ways and means committee;

(2) The chair of the finance ways and means committee of the house of representatives;

(3) Four (4) state senators appointed by the speaker of the senate;

(4) Four (4) state representatives appointed by the speaker of the house of representatives;

(5) Four (4) elected municipal officials;

(6) Four (4) elected county officials;

(7) Two (2) executive branch members, one (1) of whom may be the commissioner of finance and administration, each appointed by the governor;

(8) Two (2) private citizens, each appointed by the governor;

(9) One (1) elected representative of the Tennessee Development District Association;

(10) One (1) elected representative of the County Officials Association of Tennessee, appointed by the governor; and

(11) The comptroller of the treasury.

(b) Members currently holding appointments on the commission shall serve their full terms. As vacancies occur, new appointments shall be filled by the speaker of the senate and the speaker of the house of representatives by alternating appointments until each speaker has made three (3) non-legislative appointments for a maximum of seven (7) appointments. Thereafter, appointments shall alternate among the governor, the speaker of the senate and the speaker of the house of representatives, respectively; provided, that none of the appointing authorities mentioned in this subsection (b) shall exceed the number of appointments as provided in this subsection (b). The next three (3) vacancies in the category of private citizen shall not be filled, thereby reducing the total number of private citizens serving on the commission to two (2). Total membership may exceed twenty-five (25) members until the necessary vacancies occur in the private citizen category.

(c) The chair and vice chair of the commission shall be elected by the members of the commission for two-year terms and may subsequently be reelected; provided, that the chair shall be a member of the general assembly. In the event of the absence or disability of both the chair and vice chair, the members of the commission shall elect a temporary chair by a majority vote of those present and voting.

(d)(1) Members shall be appointed for a term of four (4) years and may be subsequently appointed to additional four-year terms except in those instances where membership is reduced as provided in this section. In the case of members of the general assembly, appointments and reappointments shall be consistent with terms of office for the senate and the house of representatives. Members currently holding office are eligible for reappointment for one (1) additional term; provided, that those holding positions subject to

downsizing shall not be eligible for reappointment.

(2) Should any member cease to be an officer, member or employee of the unit, body or agency such member is appointed to represent, such member's membership on the commission shall terminate immediately and a new member shall be appointed for a full term in the same manner as such new member's predecessor.

(e)(1) The members appointed from private life under subsection (a) shall be appointed without regard to political affiliation. Such members shall not hold any public office.

(2) Of each class of local government members appointed, no more than one-half (½) shall be from any one (1) political party.

(3) Of each class of legislative members appointed by the speaker of the senate and the speaker of the house of representatives, two (2) shall be from the majority party of their respective houses.

(f) A majority of those currently appointed to the commission shall constitute a quorum.

(g) For each municipal vacancy, the Tennessee Municipal League shall submit a list of three (3) elected nominees to the appropriate appointing authority.

(h) For each general county government vacancy, the Tennessee County Services Association shall submit a list of three (3) elected nominees to the appropriate appointing authority.

(i) For the development district vacancy, the Tennessee Development District Association shall submit a list of three (3) elected nominees to the appropriate appointing authority; except as provided in subdivision (d)(1).

(j) For the county officials vacancy, the County Officials Association of Tennessee shall submit a list of three (3) elected nominees to the governor.

(k) In implementing this section, the state shall aggressively seek racial and gender diversity by enlisting ethnic minority and female participation on all levels. No person shall be excluded from participation in, or be denied the benefits of, any program or activity receiving funding as a result of implementation of this section on grounds of race, color or gender.

History.

Acts 1978, ch. 939, § 3; T.C.A., § 4-1003; Acts 1980, ch. 873, §§ 1-3; 1981, ch. 118, § 1; 1982, ch. 688, §§ 1-4; 1984, ch. 776, §§ 1, 2; 1987, ch. 264, §§ 1-4; 1988, ch. 1013, § 3; 1989, ch. 368, §§ 1, 2; 1996, ch. 840, §§ 1-4; 1997, ch. 482, §§ 1-3; 1997, ch. 529, §§ 1, 2.

Code Commission Notes. In addition to the insertion of "for a full term" in (d)(2), Acts 1997, ch. 529 also purported, in § 1, to substitute "the Tennessee County Services Association and the Tennessee Municipal League, respectively" for "their respective state associations" in (a)(1). However, the affected language no longer appeared in this section, due to a prior amendment by Acts 1997, ch. 482, and so the amendment by Acts 1997, ch. 529, § 1 is deemed to be of no effect.

Compiler's Notes.

Acts 1997, ch. 482, which rewrote this section, provided in § 3 that in implementing the provisions of this act, the state shall aggressively seek racial and gender diversity by enlisting ethnic minority and female participation on all levels. No person shall be excluded from participation in, or be denied the benefits of any program or activity receiving funding as a result of implementation of this section on grounds of race, color or gender.

4-10-104. Duties.

The commission shall:

(1) Serve as a forum for the discussion and resolution of intergovernmental problems;

(2) Engage in such activities and make such studies and investigations as are necessary or desirable in the accomplishment of the purposes set forth in § 4-10-101;

(3) Consider, on its own initiative, ways and means of fostering better relations among local governments and state government;

(4) Draft and disseminate legislative bills, constitutional amendments and model local ordinances necessary to implement recommendations of the commission;

(5) Encourage, and where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, state, local and federal agencies, and research and consulting organizations;

(6) Review the recommendations of national commissions studying federal, state and local government relationships and problems and assess their possible application to this state;

(7) Study issues relating to changing federalism, including federal devolution, block grants, preemptions, mandates, and the tenth amendment to the Constitution of the United States;

(8) Study tax equivalent payments by municipally owned electric operations to the various taxing jurisdictions within the state;

(9) Study the laws relating to the assessment and taxation of property;

(10) Conduct an annual study of the fiscal capacity of local governments to fund education; and

(11) Conduct an annual infrastructure study.

History. Acts 1978, ch. 939, § 4; T.C.A., § 4-1004; Acts 1980, ch. 873, § 4; 1987, ch. 264, § 5; 1996, ch. 840, § 5; 1997, ch. 529, §§ 3-5.

4-10-105. Meetings — Committees — Rules of procedure.

(a) The commission shall hold meetings quarterly and at such other times as it deems necessary. The commission may hold public hearings from time to time on matters within its purview.

(b) Each officer, board, commission, council, department or agency of state government, and each political subdivision of the state, shall make available all facts, records, information and data requested by the commission, and in all ways cooperate with the commission, in carrying out the functions and duties imposed by this chapter.

(c) The commission may establish committees as it deems advisable and feasible, whose membership shall include at least one (1) member of the commission, but only the commission itself may set policy or take other official action.

(d) The commission shall promulgate rules of procedure governing its operations; provided, that they are in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(e) All meetings of the commission, or any committee thereof, at which public business is discussed or formal action is taken shall conform to title 8, chapter 44.

(f)(1)(A) Any member who misses more than fifty percent (50%) of the

scheduled meetings in a calendar year shall be removed as a member of the commission.

(B) Subdivision (f)(1)(A) shall not apply to members appointed under § 4-10-103(a)(1), (2), and (11), or the commissioner of finance and administration if appointed under § 4-10-103(a)(7).

(2) The executive director of the commission shall promptly notify, or cause to be notified, the appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (f)(1)(A).

History.
Acts 1978, ch. 939, § 5; T.C.A., § 4-1005; Acts 2017, ch. 116, § 3.

Cross-References.
Public meetings, title 8, ch. 44.

4-10-106. Staff assistance.

In addition to its own staff, and at the request of the chair, the comptroller of the treasury and the institute of public service of the University of Tennessee are authorized to provide staff assistance as necessary.

History.
Acts 1978, ch. 939, § 6; T.C.A., § 4-1006; Acts 1980, ch. 873, § 5; 1996, ch. 840, § 6.

4-10-107. Compensation — Appropriations.

(a)(1) No member of the commission is entitled to a salary for duties performed as a member of the commission.

(2) Members who are not government employees or officers shall receive seventy-five dollars ($75.00) per diem for attendance at meetings of the commission.

(3) Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties in accordance with the state comprehensive travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(b) The commission is authorized to apply for, contract for, receive and expend for its purposes any appropriations or grants from the state, its political subdivisions, the federal government, or any other source, public or private.

(c) Political subdivisions of the state are authorized to appropriate funds to the commission to share in the cost of its operations, and may furnish staff personnel to the commission.

(d) In addition to any funds appropriated by the general assembly to the commission, the commission is authorized to receive annual allocations of funds from the Tennessee State Revenue Sharing Act, § 67-9-102(b)(3).

(e) Funds provided under §§ 4-10-109 and 67-9-102 to the commission shall not revert to the general fund at the conclusion of a fiscal year, but such funds shall be carried forward. Other funds available to the commission funds may revert to the general fund at the end of the fiscal year subject to the approval of the chair of the commission.

History.
Acts 1978, ch. 939, § 7; T.C.A., § 4-1007; Acts 1996, ch. 817, § 2; 1997, ch. 528, § 1; 1997, ch. 529, §§ 6, 7.

Compiler's Notes.
Acts 1997, ch. 528, § 2 provided that no expenditure of public funds pursuant to (e) shall be made in violation of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

4-10-108. Reports.

The commission shall issue reports of its findings and recommendations, as appropriate, and shall issue a biennial report on its work. Copies of the biennial report shall be distributed to members of the commission, the library and archives and the legislative library. Upon request, copies shall be provided to other public officials, public agencies, and to the public. Copies of reports mandated by the general assembly shall be distributed to all legislative members.

History.
Acts 1978, ch. 939, § 8; T.C.A., § 4-1008; Acts 1990, ch. 695, § 1; 1990, ch. 1024, § 8; 1996, ch. 840, § 7.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-10-109. Inventory of public infrastructure needs.

(a) The commission shall annually compile and maintain an inventory of needed infrastructure within this state. The information and data gathered by such an annual inventory is deemed necessary in order for the state, municipal and county governments of Tennessee to develop goals, strategies and programs that would improve the quality of life of its citizens, support livable communities and enhance and encourage the overall economic development of the state through the provision of adequate and essential public infrastructure. All funds necessary and required for this inventory shall be administered through the commission's annual budget, and such funds shall be in addition to the commission's annual operational budget amounts. The inventory shall include, at a minimum, needed public infrastructure facilities that would enhance and encourage economic development, improve the quality of life of the citizens and support livable communities within each municipality, utility district, county and development district region of the state, and shall include needs for transportation, water and wastewater, industrial sites, municipal solid waste, recreation, low and moderate income housing, telecommunications, other infrastructure needs such as public buildings, including city halls, courthouses and kindergarten through grade twelve (K-12) educational facilities, and other public facilities needs as deemed necessary by the commission. The data shall be compiled on a county-by-county basis within each development district area. The commission shall annually contract for the services of the state's nine (9) development districts to accomplish this inventory. However, if the executive director finds that a development district has not adequately fulfilled a prior inventory contract, then instead of the development district that has not fulfilled its contract obligations, the executive director may annually contract with another agency or entity of state or local government or higher education to perform the inventory within that district's area.

(b) In compiling the public infrastructure needs inventory on a county-by-

county basis, at a minimum, the commission shall consult with each county mayor, mayor, local planning commission, utility district, county road superintendent and other appropriate local and state officials concerning planned or anticipated, or both, public infrastructure needs over the next five-year period, together with estimated costs and time of need within that time frame. From those cities and counties with adopted growth plans in accordance with title 6, chapter 58, the commission shall gather and report the infrastructure, urban services' and public facilities' needs reported in the growth plans. These infrastructure needs are factors in the determination of urban growth boundaries for cities and the planned growth areas for counties. Implementation of infrastructure, urban services and public facility elements of the city and county growth plans are to be monitored by means of the five-year inventory of public infrastructure needs.

(c) The public infrastructure needs inventory shall not include projects considered to be normal or routine maintenance. Moreover, infrastructure needs projects included in the inventory should involve a capital cost of not less than fifty thousand dollars ($50,000). The infrastructure needs inventory shall not duplicate the extensive needs data currently maintained by various state agencies on state facilities that are presently available to the commission. This limitation does not prohibit one (1) or more counties or municipalities from identifying a need for a vocational educational facility or a community college or a new public health building in a particular local area. In addition, the commission may request various state agencies to supply various needs data that may be available in such areas as highway or rail bridges, airports or other areas.

(d) The annual public infrastructure needs inventory by each development district or an agency or entity of state or local government or higher education shall be conducted utilizing standard statewide procedures and summary format as determined by the commission to facilitate ease and accuracy in summarizing statewide needs and costs.

(e) The public infrastructure needs inventory shall be completed by the development districts or an agency or entity of state or local government or higher education and submitted to the commission no later than June 30 of each year.

(f) The annual inventory of statewide public infrastructure needs and costs for provision of adequate and essential public infrastructure shall be presented by the commission to the general assembly at its next regular annual session following completion of the inventory each year.

History.

Acts 1996, ch. 817, § 1; 1997, ch. 529, §§ 8, 9; 2000, ch. 672, §§ 2-5; 2003, ch. 90, § 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Attorney General Opinions.

The release of pole attachment rates received by the Tennessee advisory commission on intergovernmental relations would not violate any state or federal law, OAG 06-129, 2006 Tenn. AG LEXIS 146 (8/15/06).

4-10-110. Effect of tax abatements or reductions on local public education.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the overall effect on local public education when property taxes or in lieu of tax payments earmarked for education are abated or reduced and whether the effect on local public education is offset by enhanced economic development. This study shall be conducted from TACIR's existing resources.

(b) All appropriate state departments and agencies shall provide assistance to TACIR.

(c) TACIR shall report its findings and recommendations, including any proposed legislation or interim reports upon conclusion of its study.

History.
Acts 2002, ch. 815, § 1.

4-10-111. Study on titling of boats.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the creation and implementation of a system for the titling of boats in this state. This study must be conducted from TACIR's existing resources.

(b) All appropriate state departments and agencies shall provide assistance to TACIR in connection with the study required by subsection (a).

(c) TACIR shall report its findings and recommendations, including any proposed legislation or interim reports upon conclusion of its study.

History.
Acts 2017, ch. 179, § 1.

Code Commission Notes. Former section § 4-10-111 (Acts 2009, ch. 473, § 3)) concerning the study on the impact on public safety of non-emergency communications district affiliated public service answering points, the report for which was to be delivered by December 1, 2011, was deemed obsolete by the Code Commission in 2015.

4-10-112. Monitoring of current wholesale power supply arrangements between the TVA and municipal utilities and electric cooperatives.

The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to continue to monitor, within existing resources, whether the current wholesale power supply arrangements between the Tennessee Valley authority and municipal utilities and electric cooperatives are likely to change in the future in a way that could affect payments in lieu of taxes from the Tennessee Valley authority to the state and to its local governments. No later than the last day of February of each year, TACIR shall report written findings to the commerce and labor committee of the senate, the commerce committee of the house of representatives, the finance, ways and means committee of the senate, and the finance, ways and means committee of the house of representatives. The report shall include recommendations, if any, on adjustments to the state tax system that would keep the state and local governments whole from such future changes.

History.
Acts 2010, ch. 1035, § 4; 2013, ch. 236, § 13; 2016, ch. 797, § 15; 2019, ch. 345, § 9.

4-10-113. Report update on broadband service.

The Tennessee advisory commission on intergovernmental relations is directed to study and prepare a report updating its January 2017 Report on Broadband Internet Deployment, Availability, and Adoption in Tennessee, which shall be delivered to the general assembly by January 15, 2021.

History.
Acts 2017, ch. 228, § 3.

Compiler's Notes.
Acts 2017, ch. 228, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Tennessee Broadband Accessibility Act."

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-10-114. Tax credits for shippers — Definitions — Study — Report.

(a) As used in this section:

(1) "Accessorial services":

(A) Means any service that is incidental to transportation services; and

(B) Includes storage, packing, unpacking, hoisting or lowering, waiting time, overtime loading and unloading, and reweighing;

(2) "Best interests of the state" means a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures are a result of the credit described in this section;

(3) "Freight motor vehicle" means a motor vehicle that is designed and used primarily to transport goods for hire or for commercial purposes;

(4) "Goods" means personal property that is treated as movable for the purposes of a contract for transportation services;

(5) "Line haul services" means the movement of goods over the public highways from the point of origination to the final destination;

(6) "Motor carrier" means a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services;

(7) "Person" means every individual, firm, association, joint-stock company, syndicate, partnership, corporation, or other business entity;

(8) "Qualified transportation expenditures" means the total charges incurred by a shipper for line haul services, transportation services, and accessorial services performed by a motor carrier for shipments picked up at points of origination within this state or delivered to final destinations within this state;

(9) "Shipper" means any person that enters into a contract for transportation services with a motor carrier;

(10) "Transportation services" means the pickup or delivery, or both, of goods at the point of origination or final destination; and

(11) "Turn-around policy" means the uniform and internal policy established by a shipper that meets the requirements of subdivision (c)(2).

(b) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the potential, overall effects of creating a franchise and excise tax credit for shippers with pickups or deliveries originating in, or destined to, any county having a population over nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census.

(c) In conducting the study under subsection (b), TACIR shall consider a franchise and excise tax credit that meets the following criteria:

(1) The credit would be allowed to any shipper that establishes and implements a turn-around policy pursuant to subdivision (c)(2) against the sum total of the franchise and excise taxes owed by the shipper, equal to two percent (2%) of qualified transportation expenditures;

(2) To qualify for the credit described in this section, the shipper would establish and implement a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. The policy must include the following minimum requirements:

(A) That pickups and deliveries shall be accomplished on the date scheduled for pickup or delivery, that pickups must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours, and that deliveries must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours; and

(B) That for each shipment of goods for which transportation services of the motor carrier is requested by a shipper, the shipper shall provide the motor carrier with contact information for:

(i) Any person who may authorize pickup or delivery of any goods to be transported if the shipper designates such a person;

(ii) The shipper and any person receiving the pickup or delivery, if different from the shipper; and

(iii) Any person to whom notification of delays or that goods are available for pickup or delivery, shall be given;

(3) The credit would only be available upon a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that the qualified transportation expenditures and the credit are in the best interests of the state;

(4) The credit would apply only in the tax year in which the shipper implements a turn-around policy meeting the criteria in subdivision (c)(2), incurs qualified transportation expenditures, and otherwise meets the requirements of this section; and

(5) The total credit claimed for any taxable year, including the amount of any carryforward credit claimed, would not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any unused credit could be carried forward in any tax period until the credit is taken; provided, however, that the credit could not be carried forward for more than fifteen (15) years.

(d) All appropriate state agencies and departments shall provide assistance to TACIR upon the request of its executive director.

(e) TACIR shall submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the general assembly no later than February 1, 2020.

History.
Acts 2018, ch. 952, § 1.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-10-115. Comprehensive evaluation on the socioeconomic impact of childhood obesity.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) shall perform a comprehensive evaluation on the socioeconomic impact childhood obesity has in Tennessee and its short- and long-term effects.

(b) All appropriate state departments and agencies shall provide assistance to TACIR in connection with the comprehensive evaluation required by subsection (a).

(c) On or before January 31, 2023, TACIR shall report its findings and recommendations, including any proposed legislation, regarding childhood obesity to the health and welfare committee of the senate and the health committee of the house of representatives.

History.
Acts 2021, ch. 503, § 1.

Effective Dates.
Acts 2021, ch. 503, § 2. May 25, 2021.

CHAPTER 11

HISTORIAN AND HISTORICAL COMMISSION

Part 1. State Historian and Historical Commission

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4-11-102. Commission — Creation — Membership.
4-11-103. Commission — Administration of funds — Reports.
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4-11-105. Commission personnel.
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4-11-306. Compliance with laws and regulations.

Part 4. Great War Commission [Expired]

PART 1

STATE HISTORIAN AND HISTORICAL COMMISSION

4-11-101. State historian.

(a) There is hereby created the position of state historian.

(b) The governor shall appoint some person qualified by experience and training to this position.

(c) The term of office of such historian shall be for four (4) years from the date of such historian's appointment and until such historian's successor shall be appointed and qualified.

(d) Subsequent appointments as the terms expire shall be made by the governor.

(e) The department of finance and administration shall furnish the state historian suitable office space in some state office building.

(f) The office of state historian shall be honorary, and the incumbent shall receive no compensation therefor, except that the incumbent shall be reimbursed for necessary traveling expenses incurred while in the performance of official duties, which shall be certified to and paid in the manner prescribed for other state officials.

(g) It is the state historian's duty to prepare for publication and to disseminate historical data upon Tennessee history, present and past, and to conduct such negotiations for the publication thereof in book form as may be deemed proper. However, no publication in book form shall be made without proper authorization from the governor.

History.
Acts 1955, ch. 130, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A., § 4-1109; Acts 1971, ch. 349, § 1; T.C.A., § 4-1101.

Cross-References.
Demolition of historic structures, title 7, ch. 51, part 12.

4-11-102. Commission — Creation — Membership.

(a) There is hereby created the Tennessee historical commission, which shall be composed of the governor or the governor's designee, the state historian, the state archaeologist, the commissioner of environment and conservation or the commissioner's designee, and the state librarian and archivist, all of whom shall be voting ex officio members; and twenty-four (24)

members appointed by the governor. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority. At least three (3) persons serving on the commission shall have an academic background in history or historic preservation, or both, preferably a master's degree. In making the appointments, there should be a conscientious effort by the appointing authority to ensure that persons meeting these criteria are inclusive of African-Americans and of Native American ancestry.

(b) In case of death or resignation of any appointed member of the commission, then such member's successor shall be appointed by the governor for a term of five (5) years from the date of the successor's appointment.

(c) Members of the commission appointed pursuant to this section shall be equally divided among the three (3) grand divisions of the state.

(d) Members who have been granted the title "member emeritus" by an action of the commission shall retain the same rights and privileges of other members, except the right to vote at meetings of the commission.

(e) All members of the commission may be paid necessary expenses while engaged in the work of the commission. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.

Acts 1969, ch. 98, § 1; modified; T.C.A., § 4-1110; Acts 1971, ch. 227, § 1; 1971, ch. 349, § 2; 1973, ch. 19, § 2; 1976, ch. 399, § 1; 1976, ch. 806, § 1(25); 1977, ch. 8, § 2; T.C.A., § 4-1102; Acts 1988, ch. 1013, § 4; 1998, ch. 1064, § 1; 2014, ch. 624, § 1.

Compiler's Notes.

The commission is attached to the department of environment and conservation for administrative purposes. See § 11-1-101.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

The Tennessee historical commission, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Acts 1998, ch. 1064, which added the last sentence in (a), provided in § 2 that the provisions of that act do not apply to any member of the commission on May 19, 1998, for the duration of such member's current term.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

Tennessee historical commission designated to be the Tennessee wars commission, § 4-11-303.

Attorney General Opinions.

Rights and privileges of ex officio commission members, OAG 98-0114, 1998 Tenn. AG LEXIS 114 (6/23/98).

4-11-103. Commission — Administration of funds — Reports.

(a) The commission shall adopt rules for the transaction of business and shall keep a record of all its proceedings.

(b) It shall:

(1) Prepare such reports of its operation as may be required by the governor or the general assembly;

(2) Administer funds made available from public sources for historical purposes;

(3) Submit a budget consistent with its program; and

(4) Operate its program within the financial resources available.

(c) The commission shall exercise administrative supervision over all funds

appropriated for the purposes of this part, and no allotment of funds may be made without the review of the commission.

(d) The commission shall require proper financial and accounting statements from all recipients of funds authorized under this part on or before June 30 of each year, and all recipients shall comply with the standard operating procedures of the commission.

History.
Acts 1969, ch. 98, § 2; T.C.A., §§ 4-1111, 4-1103.

Compiler's Notes.
The commission is attached to the department of environment and conservation for administrative purposes. See § 11-1-101.

Attorney General Opinions.
T.C.A. § 4-11-103(b)(2) is sufficiently broad to authorize the Tennessee Historical Commission to pay for the publication of magazines or journals of private organizations related to Tennessee history, which circulate exclusively to the members of those organizations, given such publications concern "historical purposes." OAG 12-53, 2012 Tenn. AG LEXIS 53 (5/21/2012).

4-11-104. Criteria for evaluation of historic sites.

The commission shall develop criteria for the evaluation of state historic sites and all related real and personal property that may be of such importance as would justify acquisition and ownership by this state, and it shall also develop criteria for evaluation of any such properties owned by agencies other than the state for which state aid is requested.

History.
Acts 1969, ch. 98, § 3; T.C.A., §§ 4-1112, 4-1104.

4-11-105. Commission personnel.

(a) In order to effectively carry on its program, the commission has the authority to create such positions and employ such personnel as are deemed necessary to conduct its affairs in accordance with the law and rules applicable to employees in the unclassified state service.

(b) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1969, ch. 98, § 4; T.C.A., § 4-1113; Acts 1976, ch. 806, § 1(25); T.C.A., § 4-1105.

4-11-106. Commission — Advisory boards or committees.

(a)(1) The commission may also establish and appoint one (1) or more advisory boards or advisory committees to assist the commission in the performance of its duties.

(2) The commission shall establish a historic cemetery advisory committee composed of seven (7) members. The committee may include up to three (3) members of the commission and must include at least one (1) non-commission member with expertise in each of the following areas: archeology, cemetery or land law, and historic preservation. The commission shall

strive to ensure that the membership of the committee appropriately reflects the racial and geographic diversity of the state. The committee shall study protections and preservation efforts for cemeteries of historical importance and the need, if any, to enhance protections and preservation efforts. By December 1, 2020, and every five (5) years thereafter, the committee shall issue a report, including any recommendations for legislative action, to the commission. The commission may adopt the report or return the report to the committee for further consideration. If adopted by the commission, the report shall be posted on the website of the commission.

(b) The commission is authorized, out of any funds appropriated to the commission, to pay the actual expenses of such board or committee members incurred while on official business.

(c) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1969, ch. 98, § 7; T.C.A., § 4-1116; Acts 1976, ch. 806, § 1(25); T.C.A., § 4-1106; Acts 2018, ch. 1032, § 2.

4-11-107. Acquisition of historical or archaeological property.

The commission may accept gifts, bequests and endowments from any private source, and may acquire real and personal properties that have statewide historical or archaeological significance by gift, purchase, devise or bequest, the title thereto to vest in the state.

History.
Acts 1969, ch. 98, § 5; T.C.A., §§ 4-1114, 4-1107.

4-11-108. Operation of historical property.

(a)(1) The historical properties owned by the state shall be placed under the authority of the commission, which may in its discretion make a contract with any county, municipality or agency within the state or with any nonprofit corporation or organization or with any private individual, partnership, corporation or association for the administration, development or operation of such property, which contract shall be subject to periodic review.

(2) Any such contract made by the commission shall be expressly subject to the requirements of the public purchasing law, title 12, chapter 3.

(3) The commission shall determine criteria for the approval of such properties for state aid, and shall make reasonable rules for the regulation of use by the public of such historical properties under its charge, including the establishment of admission fees to be charged the public.

(b)(1) The commission, under this chapter, may contract for the preservation, maintenance and operation of the Sam Houston Schoolhouse State Historic Site.

(2) The commission, under the authority of this chapter, shall enter into a suitable contract for the maintenance, preservation and interpretation of the John Sevier Home Historic Site.

History.
Acts 1969, ch. 98, § 6; T.C.A., § 4-1115; Acts 1974, ch. 559, §§ 1, 2; impl. am. Acts 1975, ch. 143, § 1; Acts 1979, ch. 108, § 2; 1979, ch. 126, § 3; T.C.A. (orig. ed.), § 4-1108.

Cross-References.
Review prior to demolishing, altering or transferring historically, architecturally or culturally significant state property, § 4-11-111.

4-11-109. Preservation of public records — Certified copies.

(a) Any state, county, town or other public official in custody of public documents is empowered in such official's discretion to turn over to the commission any official books, documents, records, official papers, newspaper files, printed books or portraits not in current use in the public official's office, and the commission shall provide for their permanent preservation.

(b) When so surrendered, copies of the items mentioned in subsection (a) shall be made and certified under seal, upon application of any person, which certificate shall have effect as if made by the officer originally in charge of them, and the commission shall charge for such copies the same fees as that officer is by the law allowed.

History.
Acts 1921, ch. 74, § 8; Shan. Supp., § 2577a24; mod. Code 1932, T.C.A. (orig. ed.), § 4-1107; T.C.A., § 4-1109.

4-11-110. Appropriations.

For carrying out the purposes and objects of this chapter, the sum of ten thousand dollars ($10,000), or so much thereof as shall be needed, over and above all the funds derived from the sale of the publications and all of the fees collected under § 4-11-109, is annually or continuously appropriated, and, upon order of the chair of the commission, the commissioner of finance and administration is empowered and directed to draw the commissioner's warrant for the sum from the state treasury.

History.
Acts 1921, ch. 74, § 9; Shan. Supp., § 2577a25; mod. Code 1932, § 1024; impl. am. Acts 1937, ch. 33, §§ 15, 24; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 4-1108; T.C.A., § 4-1110.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-11-111. Review prior to demolishing, altering or transferring historically, architecturally or culturally significant state property.

(a) All state agencies and institutions of higher education and other state entities that have control of state property shall consult the commission prior to demolishing, altering or transferring any property that is or may be of historical, architectural or cultural significance. Such agencies, institutions and entities shall seek the advice of the commission on possible alternatives to the demolition, alteration or transfer of such property.

(b) The commission shall make staff available to assist agencies, institutions and entities in determining if property is or may be of historical, architectural or cultural significance.

(c) The commission shall have thirty (30) working days to review and

comment on plans to demolish, alter or transfer state property that is or may be of historical, architectural or cultural significance prior to approval of such action by the state building commission. Such comment shall be in writing and filed with the proposing agency or entity and the state building commission.

(d) The standard of review by the historical commission shall be the secretary of the interior's standards of rehabilitation or other criteria adopted in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(e) The state building commission shall consider the comments of the historical commission prior to approving or disapproving plans to demolish, alter or transfer state property that is or may be of historical, architectural or cultural significance.

(f) Nothing contained in this section shall be construed as further extending the jurisdiction of the state building commission over transactions involving department of transportation projects. When the department is the proposing agency, the commissioner of transportation shall consider the comments of the historical commission prior to demolishing, altering or transferring state property that is of historical, architectural or cultural significance.

History.
Acts 1988, ch. 699, § 1.

4-11-112. Site preservation fund.

(a) There is created a special account in the state treasury to be known as the Tennessee Civil War or War Between the States site preservation fund, hereinafter referred to as the "preservation fund".

(b)(1) Moneys in the preservation fund shall be used exclusively by the Tennessee historical commission to provide grants to private nonprofit organizations to match federal and other matching funds. All such grants shall be made solely for the fee simple purchase of, or purchase of protective interests in, any Tennessee Civil War or War Between the States historic site listed in the Report on the Nation's Civil War Battlefields, issued in 1993, or as amended or reissued pursuant to the Civil War Battlefield Preservation Act of 2002 (P.L. 107-359)(16 U.S.C. § 469k), as amended or supplemented by new information by the national park service's American battlefield protection program, hereinafter referred to as "the report" or any historic site associated with the Underground Railroad that is eligible for national historic landmark designation or for listing in the national register of historic places.

(2) The commission shall establish, administer, manage and make expenditures and allocations from the preservation fund.

(3)(A) Private nonprofit organizations seeking grant funding from the preservation fund shall be required to provide matching funds from any nonstate sources on a dollar-for-dollar basis.

(B) For the purposes of this section, "matching funds" means both cash and the value of any noncash contribution due to a bargain sale or the donation of land or interest therein made by the landowner as part of the proposed project.

(C) No state funds may be included in determining the amount of the

match.

(4) Eligible costs for which moneys from the preservation fund may be allocated include acquisition of land and any improvements thereon or permanent protective interests, including, but not limited to, conservation easements, and costs associated with such acquisitions, including, but not limited to, the cost of appraisals, environmental reports, surveys, title searches and title insurance, and other closing costs.

(5) Grants from the preservation fund shall not exceed fifty percent (50%) of the appraised value of the land or permanent protective interest therein.

(6) Grants from the preservation fund may be awarded for prospective purchases or for acquisitions which the applicant has closed; provided, that for closed acquisitions, the applicant shall demonstrate that:

(A) The closing occurred no more than twelve (12) months prior to the date of application for the grant; and

(B) An identifiable threat to the resource or compelling need for preservation existed at the time of the purchase.

(7) Any eligible organization making an acquisition of land or interest therein pursuant to this section shall grant to the state or other qualified holder a perpetual easement placing restrictions on the use or development of the land. In cases where the easement is granted to a holder other than the state, all terms and conditions of the easement shall be reviewed by and found by the commission to be consistent with the intent and purpose of the Conservation Easement Act, compiled in title 66, chapter 9, part 3, and to accomplish the perpetual preservation of Civil War or War Between the States historic site or historic site associated with the Underground Railroad. Such other holder shall demonstrate to the commission that it has the capacity and expertise to manage and enforce the terms of the easement.

(8) Nothing in this section shall be construed to prevent the subsequent transfer of property acquired pursuant to this section to the United States, its agencies or instrumentalities.

(9) The commission shall establish, administer, manage and make expenditures and allocations from the preservation fund and shall establish guidelines for applications, prioritization and award of grants from the preservation fund in consultation with appropriate site preservation interests. Consideration shall be given, but not limited to, the following:

(A) Significance of the battlefield and the location of the proposed project in relation to core and study areas as identified in the report as well as proximity to other protected lands;

(B) Threat to and integrity of the features associated with the battle which occurred there; and

(C) The financial and administrative capacity of the applicant to complete the project and to maintain and manage the property consistent with the public investment and public interests, such as education, recreation, research, heritage tourism promotion or orderly community development.

(10) All grant recipients are subject to audit by the comptroller of the treasury as to the funds received pursuant to this section.

(c)(1) In addition to appropriations made to the preservation fund, the

commission may accept other funds, public or private, by way of gift or grant to the fund. Any such gift or grant shall be deposited into the preservation fund to be distributed in accordance with this section.

(2) Moneys in the preservation fund may be invested by the state treasurer in accordance with § 9-4-602.

(3) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the preservation fund shall be credited to such fund, shall not revert to the general fund, and shall be carried forward into the subsequent fiscal year.

(4) Any balance remaining unexpended at the end of a fiscal year in the preservation fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

History.
Acts 2013, ch. 248, § 2.

Compiler's Notes.
The Civil War Battlefield Preservation Act of 2002 (P.L. 107-359), codified in 16 USC § 469k, was repealed by its own terms effective September 30, 2008 (see 16 U.S.C.§ 469k(e)).

Acts 2013, ch. 248, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Tennessee Civil War or War Between the States Site Preservation Act of 2013."

4-11-113. Historic property land acquisition fund.

(a) There is hereby created a special agency account in the state general fund known as the historic property land acquisition fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in subsection (b). Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(b) The historical commission shall expend the funds which are deposited in the historic property land acquisition fund only for the acquisition of land for any area designated as an historic place as evidenced by its inclusion on the national register of historic places or the Tennessee register of historic places, or any other area of historic significance as approved by majority vote of the entire membership of the commission, and for the acquisition of easements to protect the historic areas. Such funds may also be used for capital projects, including improvements and maintenance, of properties previously acquired, and for capital grants to other historic properties not owned or operated by the state.

(c) No funds deposited in the historic property land acquisition fund shall be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain.

History.
Acts 2016, ch. 1059, § 2.

PART 2

TENNESSEE REGISTER OF HISTORIC PLACES

4-11-201. Creation — Authority.

The Tennessee historical commission is authorized and directed to maintain and expand a register of districts, sites, buildings, structures and objects significant in Tennessee history, architecture, archaeology, engineering, and culture. This register shall be known as the "Tennessee register of historic places" and shall be the official inventory of irreplaceable historic resources that need to be given maximum encouragement for historic preservation.

History.
Acts 1971, ch. 141, §§ 1, 2; T.C.A., §§ 4-1111, 4-1112, 4-11-202; Acts 1994, ch. 961, § 2.

Cross-References.
Conservation easements, title 66, ch. 9, part 3.
Demolition of historic structures, title 7, ch. 51, part 12.
Historic zoning, title 13, ch. 7, part 4.
Preservation restrictions, title 66, ch. 9, part 1.

4-11-202. Criteria for listing places — Revision.

(a) The following criteria are used in determining eligibility in being placed on the Tennessee register of historic places:

(1) The quality of significance in Tennessee history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and that:

(A) Are associated with events that have made a significant contribution to the broad patterns of our history;

(B) Are associated with the lives of persons significant in our past;

(C) Embody the distinctive characteristics of a type, period or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(D) Have yielded, or may be likely to yield, information important in prehistory or history; and

(2) Ordinarily cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty (50) years shall not be considered eligible for the Tennessee register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(A) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(B) A building or structure removed from its original location but that is significant primarily for architectural value, or that is the surviving structure most importantly associated with an historic person or event;

(C) A birthplace or grave of an historical figure of outstanding impor-

tance, if there is no other appropriate site or building directly associated with such historical figure's productive life;

(D) A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(E) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

(F) A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance; or

(G) A property achieving significance within the past fifty (50) years, if it is of exceptional importance.

(b) Revisions to the criteria in subsection (a) may be made by the Tennessee historical commission in order to enhance the historical quality of the register.

History.
Acts 1971, ch. 141, §§ 3, 4; T.C.A., §§ 4-1113, 4-1114, 4-11-203, 4-11-204; Acts 1994, ch. 961, § 3.

Compiler's Notes.
Former § 4-11-202, concerning the authority of the register, was merged into present § 4-11-201 in 1994.

4-11-203. Properties listed in national register.

The Tennessee register of historic places shall consist of all properties in Tennessee that are listed on the national register of historic places maintained by the United States department of interior as of July 1, 1994. Properties that are in the future nominated to the national register of historic places shall be also listed in the Tennessee register of historic places as of the date of their acceptance by the keeper of the national register; provided, that the owner or owners of such property have not objected to such listing as provided for in § 4-11-204.

History.
Acts 1994, ch. 961, § 4.

Compiler's Notes.
Former § 4-11-203, concerning the criteria for listing historic places, was merged with former § 4-11-204 and amended to form present § 4-11-202 in 1994.

4-11-204. Public and private properties eligible — Notice to owner — Objections.

Both publicly and privately owned property shall be included in the Tennessee register of historic places. However, prior to the inclusion of privately owned property on the Tennessee register of historic places, the owner or owners of such property shall be given the opportunity (including a reasonable period of time) to concur in or object to such listing. If the owner, or in the case of multiple ownership as in an historic district, a majority of owners, object to such listing, the property proposed for listing in the Tennessee register of historic places shall not be listed until such objection is withdrawn.

History.
Acts 1971, ch. 141, § 5; T.C.A., §§ 4-1115, 4-11-205; Acts 1994, ch. 961, § 5.

Compiler's Notes.
Former § 4-11-204, concerning revision of criteria, was merged into present § 4-11-202 in 1994.

4-11-205. Publication and distribution of register.

The register will be published annually when funds are available, and copies of the register shall be placed in the various planning agencies of the state.

History.
Acts 1971, ch. 141, § 6; T.C.A., §§ 4-1116, 4-11-206; Acts 1994, ch. 961, § 6.

Compiler's Notes.
Former § 4-11-205, concerning eligibility of public and private properties, was transferred to § 4-11-204 in 1994.

4-11-206. Removal of properties from register.

A property listed in the Tennessee register of historical places may be removed from such listing if it has lost the qualities of historical, architectural, or archaeological significance that made it eligible.

History.
Acts 1971, ch. 141, § 7; T.C.A., §§ 4-1117, 4-11-207; Acts 1994, ch. 961, § 7.

Compiler's Notes.
Former § 4-11-206, concerning publication and distribution of register, was transferred to § 4-11-205 in 1994.

4-11-207. Keeper of the register.

The executive director of the Tennessee historical commission is designated as keeper of the Tennessee register of historic places.

History.
Acts 1971, ch. 141, § 8; T.C.A., §§ 4-1118, 4-11-208; Acts 1994, ch. 961, § 8.

Compiler's Notes.
Former § 4-11-207, concerning withdrawal of properties from the register, was transferred to § 4-11-206 in 1994.

There is no statutory provision for the executive director of the Tennessee historical commission other than the general provisions of § 4-11-105 authorizing the commission to create such positions and employ such personnel as are deemed necessary to conduct its affairs.

4-11-208. Polk grave site — Jackson statue.

(a) Notwithstanding any provision of the law or of this part to the contrary, the grave site of James K. Polk shall not be relocated unless the proposed relocation is approved in advance by a duly adopted joint resolution of the general assembly.

(b) Nothing contained within this part shall be construed to prohibit the transfer of any statue of Andrew Jackson, currently placed upon the grounds of the state capitol building, to the Jackson homeplace, the Hermitage.

History.
Acts 1981, ch. 54, §§ 6, 7; 1998, ch. 572, § 3; T.C.A. § 4-11-306; T.C.A. § 4-11-209.

Code Commission Notes. This section was renumbered from § 4-11-209 to § 4-11-208 by the authority of the Code Commission in 2021.

PART 3

TENNESSEE WARS COMMISSION

4-11-301. Creation.

There is hereby created the Tennessee wars commission, hereafter referred to as the "commission," which shall coordinate planning, preservation and promotion of the structures, buildings, sites and battlefields of Tennessee associated with the French and Indian War, American Revolution, War of 1812, U.S.-Mexican War, and the War Between the States.

History.
Acts 1994, ch. 824, § 1; 1998, ch. 844, § 1; T.C.A. § 4-11-501.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

The Tennessee wars commission, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

4-11-302. Powers and duties.

(a) The commission shall:

(1) Develop a plan regarding significant sites in Tennessee related to the French and Indian War, American Revolution, War of 1812, U.S.-Mexican War, and the War Between the States, hereafter referred to as the "wars." The plan will provide incentives to local landowners and local governments to preserve and restore battlefields and historic sites related to the wars. Through cooperative agreements between local governments, landowners and the commission, such entities will work together to preserve and restore historic sites;

(2) Preserve and conserve the legacy of the wars in the state of Tennessee;

(3) Recognize important events and geographic locations in the conduct of the wars in the state of Tennessee;

(4) Establish a geographic data base and an information system that can be used to locate, track, and cross-reference significant historical and cultural properties, structures and markers associated with the wars;

(5) Acquire or provide funds for the acquisition of battlegrounds, cemeteries and other historic properties associated with the wars;

(6) Expend funds received from state appropriations and other sources to make grants to municipalities, counties and nonprofit organizations for the purpose of maintaining and restoring existing memorials and cemeteries related to the wars;

(7) Encourage the establishment of reference sections relating to the wars in high schools;

(8) Ensure that all literature produced by the commission adequately reflects the role of African-Americans in the French and Indian War, American Revolution, War of 1812, U.S.-Mexican War, and contributions on both sides of the War Between the States; and

(9) Ensure the opportunity for adequate participation in the activities of the commission by African-Americans.

(b) In carrying out its purposes, the commission is authorized to:

(1) Accept loans or grants, or both, of money, materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or such agency or instrumentality may impose;

(2) Receive and accept loans, gifts, grants, donations or contributions of property, facilities, or services, with or without consideration from any person, firm or corporation or from the state of Tennessee or any agency or instrumentality thereof or from any county, municipal corporation or local government or governing body; and

(3) Hold, use, administer and expend such sum or sums as may hereafter be received as income, as gifts or as appropriations from the general assembly for any of the purposes of the commission.

History.
Acts 1994, ch. 824, § 2; 1998, ch. 844, §§ 2, 3; T.C.A. § 4-11-502.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

4-11-303. Composition.

The Tennessee historical commission established by § 4-11-102, is designated to be the Tennessee wars commission.

History.
Acts 1994, ch. 824, § 3; T.C.A. § 4-11-503.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

4-11-304. Acquisition of lands — Maintenance.

(a) The commission may, with the consent of the owner, acquire by donation, purchase or exchange lands and interests in battlefields and memorials of the wars, together with lands and interests in lands necessary to provide adequate public access to the battlefields and memorials.

(b) The commission may make funds available, subject to appropriations for such purposes, for the maintenance and protection of the battlefields and memorials that may be subject to agreements as provided in § 4-11-302.

History.
Acts 1994, ch. 824, § 4; T.C.A. § 4-11-504.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

4-11-305. Compensation of members — Reports — Appropriations.

(a) The members of the commission shall receive no salary but shall be reimbursed necessary travel and per diem expenses as prescribed in comprehensive travel regulations by the commissioner of finance and administration for employees of the state.

(b) The commission shall file an annual report with the governor and the speakers of the respective bodies of the general assembly containing a

summary of the accomplishments of the commission during the preceding year and the plans of the commission for the following year.

(c) No state funds shall be expended for the purposes of the commission unless specifically appropriated by the general assembly.

History.
Acts 1994, ch. 824, § 5; T.C.A. § 4-11-505.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-11-306. Compliance with laws and regulations.

In the conduct of its affairs, the commission shall comply with all laws, policies and regulations applicable generally to state agencies, with specific reference made to the laws, policies and regulations applicable to the historical commission. Furthermore, all loans shall be subject to the approval of the state funding board and all land acquisitions and dispositions shall be subject to the approval of the state building commission.

History.
Acts 1994, ch. 824, § 6; T.C.A. § 4-11-506.

Compiler's Notes.
Former part 5 of this chapter was transferred to part 3 of this chapter by the code commission in 2011.

PART 4

GREAT WAR COMMISSION [EXPIRED]

Compiler's Notes.
Former § 4-11-405 provided that: "The commission [§§ 4-11-101 to 4-11-105] shall cease to exist on November 11, 2018, at which time all the commission's minutes, files, papers, recordings, publications, and any other items of historical value shall be delivered to the state library and archives to ensure the preservation of such items."

Former title 4, ch. 11, part 4, §§ 4-11-401–4-11-405 (Acts 2013, ch. 290, §§ 2-6; 2015, ch. 139, § 1), concerned the Great War Commission.

CHAPTER 12

STATE MUSEUM

Part 1. General Provisions

Section
4-12-101. Creation.
4-12-102. Executive director and other employees — Museum fund.
4-12-103. Compensation of staff.
4-12-104. Location — When open.
4-12-105. Administration of other museums and exhibits.
4-12-106. Appropriation — Other funds.
4-12-107. Future reorganization permitted.
4-12-108. Sales facilities authorized.
4-12-109. Items to be sold.
4-12-110. Use of profits — Earned revenue reserve fund established — Administration — Expenditures.

Section
4-12-111. Fees or admission — Facilities for nonprofit groups.
4-12-112. Black history.
4-12-113. Confidentiality of information relating to candidates for position of museum executive director.
4-12-114. Bill Haslam Center.

Part 2. Museum Inventory Act

4-12-201. Short title.
4-12-202. Exemption from inventory procedures.
4-12-203. Part definitions.

Part 3. Museum Donation Act

4-12-301. Short title.
4-12-302. Tennessee state museum — Defined.
4-12-303. Powers of executive director.

PART 1

GENERAL PROVISIONS

4-12-101. Creation.

There is created a state museum for the purpose of bringing together the administration of the various collections of articles, specimens and relics owned by the state, to be under the supervision of, and administered by, the Douglas Henry state museum commission, established pursuant to chapter 20, part 3 of this title.

History.
Acts 1937, ch. 285, § 1; C. Supp. 1950, § 2569.2 (Williams, § 2569.5); Acts 1959, ch. 154, § 1; 1971, ch. 388, § 1; T.C.A. (orig. ed.), § 4-1201; Acts 2009, ch. 497, § 2.

Cross-References.
Abandoned cultural property, title 66, ch. 29, part 2.
Arts commission, § 4-20-101.

4-12-102. Executive director and other employees — Museum fund.

(a) The Douglas Henry state museum commission shall employ a museum executive director, and delegates its authority to the museum executive director to hire and manage experts and other employees as may be needed to properly care for and maintain the museum and to impart its educational value to the visiting public.

(b) The museum executive director has the authority to assume charge of all collections and articles acquired, and to coordinate and display such articles in such manner as the museum executive director deems to the best interest of the general public.

(c)(1) The museum executive director also has the power to solicit and accept gifts and contributions on behalf of the state museum upon such terms and conditions and for such uses and purposes as may be consistent with state law.

(2) The museum executive director shall install and maintain suitable containers for the collection of small cash donations to the state museum. The funds so collected shall be receipted and deposited as departmental revenue of the museum with the same budgetary and accounting controls as

other funds of the museum. Expenditure of funds so collected shall be for the furtherance of the objectives of the museum's programs and shall be made under the same restrictions and controls as other expenditures of the museum.

(3)(A) The museum executive director may directly solicit funds on behalf of the museum, including, but not limited to, creating membership and sponsorship organizations and conducting annual giving campaigns.

(B) There is established within the general fund a special agency account to be known as the museum fund for the purpose of furthering the objectives of the museum's programs. All funds collected pursuant to this subdivision (c)(3) must be deposited into the fund. No part of the fund reverts to the general fund, but shall be carried forward until expended in accordance with this chapter.

(C) The fund must be administered by the museum executive director.

(D) Expenditure of funds collected pursuant to this subdivision (c)(3) must be for the furtherance of the objectives of the museum's programs and must be made under the same restrictions and controls as other expenditures of the museum.

(E) The museum executive director may create subfunds for funds raised with donor conditions upon their expenditure.

(F) Prior to July 1, 2019, and prior to July 1 of each subsequent fiscal year, and to the extent necessary during the fiscal year, certifications must be made and delivered to the commissioner of finance and administration, who has final authority regarding the actual expenditures of the fund.

(G) The museum executive director may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title to effectuate the purposes of this subdivision (c)(3).

(H) On or before July 31, 2019, and on or before July 31 of each subsequent fiscal year, the museum executive director must submit to the chairs of the finance, ways and means committees of the senate and the house of representatives, a report detailing the fundraising activities of the museum during the previous fiscal year.

History.

Acts 1937, ch. 285, § 2; C. Supp. 1950, § 2569.3 (Williams, § 2569.6); Acts 1959, ch. 154, § 2; 1971, ch. 388, § 2; T.C.A. (orig. ed.), § 4-1202; Acts 1983, ch. 420, § 4; 2008, ch. 641, § 1; 2009, ch. 497, § 3; 2018, ch. 821, §§ 1-3; 2019, ch. 81, § 1.

Cross-References.

Confidential information concerning state museum donors, § 10-7-504.

Director of state museum may accept donations, § 4-12-303.

4-12-103. Compensation of staff.

(a) The museum executive director's compensation shall be determined by the Douglas Henry state museum commission in a manner consistent with the department of human resources' policies and standards.

(b) Experts and such other assistants as may be employed under this chapter shall have their compensation determined by the museum executive director in a manner consistent with the department of human resources' policies and standards.

History.
Acts 1937, ch. 285, § 6; C. Supp. 1950, § 2569.6 (Williams, § 2569.10); Acts 1959, ch. 154, § 3; 1971, ch. 388, § 3; T.C.A. (orig. ed.), § 4-1203; Acts 2009, ch. 497, § 4; 2018, ch. 821, § 4.

4-12-104. Location — When open.

The museum shall occupy space in Nashville at the James K. Polk State Office Building and Cultural Complex, on the ground floor of the south wing of the War Memorial Building, and at 1000 Rosa L. Parks Boulevard. All three (3) facilities shall be open on days and during hours as determined by the Douglas Henry state museum commission.

History.
Acts 1937, ch. 285, § 3; C. Supp. 1950, § 2569.4 (Williams, § 2569.7); impl. am. Acts 1959, ch. 154, § 1; Acts 1971, ch. 388, § 4; 1972, ch. 485, § 1; 1977, ch. 402, § 1; T.C.A., § 4-1204; Acts 1991, ch. 213, § 2; 2018, ch. 821, § 5.

Compiler's Notes.
Acts 1991, ch. 213, § 1 provided that it is the intention of the general assembly that the Tennessee arts commission has the authority, but is not required, to close the state museum on Monday of each week.

4-12-105. Administration of other museums and exhibits.

(a) In order to carry out this chapter, the World War Museum, previously administered by the adjutant general's office, the Civil War Exhibit, previously administered by the United Daughters of the Confederacy and Spanish-American War Exhibit, previously administered by the Spanish War Veterans, the Museum of Natural History, previously administered by the former game and fish commission, the Tennessee Archaeological Exhibit, the Tennessee Historical Exhibit and the relics and mementos of the World War II Commission are under the supervision of the state museum.

(b) Any other exhibit in the possession of the state, or that may come into the possession of the state, shall be placed under this commission and administered under this chapter, this subsection (b) having especial reference to exhibits of the natural resources of the state.

(c) The state museum is authorized and empowered to:

(1) Enter into contracts, within the limits and funds available therefor, with individuals, organizations and institutions for services furthering the objectives of the museum's programs;

(2) Provide advice and technical assistance, within the limits of funds available therefor, to the staff or board of directors or trustees of museums that are operated on state-owned property by entities other than the state; and

(3) Make and sign any agreement and do and perform any acts that may be necessary to carry out the purposes of this chapter.

History.
Acts 1937, ch. 285, § 4; C. Supp. 1950, § 2569.5 (Williams, § 2569.8); modified; Acts 1959, ch. 154, § 4; 1971, ch. 388, § 5; modified; T.C.A. (orig. ed.), § 4-1205; Acts 1991, ch. 213, §§ 4, 5.

Compiler's Notes.
Acts 1991, ch. 213, § 3 provided that it is the intention of the general assembly that the expertise and knowledge of the state museum should be shared with other museums operated by entities on property owned by the state; provided, that the operation, organization and supervision of the state museum shall not be changed by providing these services.

Cross-References.
Agricultural museum, title 43, ch. 1, part 5.

Disposal of surplus property in collection of state museum, § 12-2-409.

4-12-106. Appropriation — Other funds.

In order to establish, maintain and operate the state museum, five thousand dollars ($5,000) annually is appropriated out of the general funds of the state, which funds may be supplemented by any other sums for the museum, coming into the hands of the commission from any other source whatsoever.

History.
Acts 1937, ch. 285, § 5; C. Supp. 1950, § 2569.7 (Williams, § 2569.9); impl. am. Acts 1959, ch. 154, § 1; Acts 1971, ch. 388, § 6; T.C.A. (orig. ed.), § 4-1206.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-12-107. Future reorganization permitted.

Nothing in this chapter shall prohibit a future reorganization that may be enacted to bring together all or any of the cultural activities of the state, including the historical commission, within a single department or division.

History.
Acts 1971, ch. 388, § 7; T.C.A., § 4-1207.

4-12-108. Sales facilities authorized.

(a) The state museum is hereby authorized to operate sales facilities in the state museum.

(b) Nothing in this chapter shall prevent the operation of sales facilities in the state museum by any nonprofit corporation that has as its chief purpose the support of the programs of the state museum.

History.
Acts 1975, ch. 291, § 1; T.C.A., § 4-1208; Acts 1991, ch. 213, § 7; 2018, ch. 821, § 6.

Compiler's Notes.
Acts 1991, ch. 213, § 6 provided that it is the intention of the general assembly that such private not-for-profit corporations as may, from time to time, exist to serve and further the programs of the Tennessee state museum, be allowed to operate sales facilities within the museum. To prevent confusion over the ownership of goods to be sold, the policies governing the sale of goods and the establishment of accurate operating costs, it is the further intention of the general assembly that should any such corporation desire to operate a gift shop or any other sort of sales facility presently operated by the state, the corporation must purchase the entire stock of the state-operated facility.

4-12-109. Items to be sold.

The facility authorized by § 4-12-108 shall sell Tennessee produced items or items appropriate to the museum's programs, as approved by the museum executive director.

History.
Acts 1975, ch. 291, § 2; T.C.A., § 4-1209; Acts 2018, ch. 821, § 7.

4-12-110. Use of profits — Earned revenue reserve fund established — Administration — Expenditures.

(a) Any profits derived from sales facilities authorized by § 4-12-108 shall be used in the programs of the state museum.

(b) There is established within the general fund a special agency account to be known as the earned revenue reserve fund for the purpose of assuring sufficient funding for the administration and programs of the state museum. All sales facilities revenue and other program fees collected shall be deposited into the fund. No part of the fund shall revert to the general fund, but shall be carried forward until expended in accordance with this chapter.

(c) The fund shall be administered by the museum executive director.

(d) For each fiscal year, there is allocated a sum sufficient from the fund to provide for the administrative and program costs of the state museum.

(e) Prior to the start of each fiscal year, and to the extent necessary during the fiscal year, certifications shall be made and delivered to the commissioner of finance and administration who has final authority regarding the actual expenditures of the fund.

History.
Acts 1975, ch. 291, § 3; T.C.A., § 4-1210; Acts 2018, ch. 821, § 8.

4-12-111. Fees or admission — Facilities for nonprofit groups.

(a)(1) The state museum is authorized to impose a fee or charge admission for special events or programs.

(2) The amount of the fee or charge shall be determined by the Douglas Henry state museum commission, and proceeds from the fees or charges shall only be used by the commission to offset the cost of the special events or programs or other educational programs of the state museum.

(b) The state museum is authorized by this subsection (b) to have reduced fees or admission charges for any person who may have a disability, be an honorably discharged veteran of the United States armed forces, sixty-five (65) years of age or older, or a student in any school, grades kindergarten through twelve (K-12), for the special events or programs.

(c) The state museum, in the discretion of the museum executive director, is further authorized to provide facilities, assistance and space to any nonprofit corporation that has as its principal purpose the support of the programs of the state museum and whose net proceeds are directed to benefit the programs or operation of the state museum. This cooperation and assistance may be provided regardless of whether the corporation charges a fee or imposes an admission charge to its programs.

History.
Acts 1979, ch. 367, § 1; T.C.A., § 4-1211; Acts 2008, ch. 1128, § 1; 2009, ch. 497, § 5; 2011, ch. 47, § 2; 2018, ch. 821, §§ 9, 10.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial

in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

4-12-112. Black history.

(a) The state museum commission, acting upon the recommendation of the museum executive director, is hereby authorized to contract with the Beck Cultural Exchange Center, Knoxville, for either the appropriate deposit, display, examination, or preservation, or any of these, at the center of such items or collections of articles, specimens and relics owned by the state and administered by the commission, as may be deemed by the commission and by the center to be of special interest to the black citizens of this state.

(b) The terms of any such contract shall ensure that adequate steps are undertaken to protect and preserve all such items for the benefit of future Tennesseans.

History.
Acts 1983, ch. 245, § 2; 2018, ch. 821, § 11.

4-12-113. Confidentiality of information relating to candidates for position of museum executive director.

(a) Except as provided in subsections (b) and (c), notwithstanding any law to the contrary, an application for a position of museum executive director, materials submitted with an application, letters of recommendation or references concerning an applicant, and any other records or information relating to or arising out of the process of searching for and selecting an individual for the position of museum executive director shall be treated as confidential and shall not be open for public inspection, if the records could be used to identify a candidate for the position.

(b) After a search committee has selected candidates as finalists for the position of museum executive director, the committee shall publicly announce the finalists. The announcement must occur no later than fifteen (15) calendar days before the final vote of the Douglas Henry state museum commission to appoint or elect a person to fill the position of museum executive director. Records relating exclusively to the candidates selected as finalists are not confidential and shall be open for public inspection, except for a record otherwise confidential under state or federal law.

(c) This section shall not apply to information relating to a candidate who did not expressly request that the candidate's information be kept confidential.

(d) Meetings or portions of meetings devoted to discussing information deemed confidential pursuant to this section are exempt from title 8, chapter 44, part 1.

(e) For the purposes of this section, "finalists" means those candidates selected by a search committee as the group to be recommended to the commission from which one (1) shall be appointed or elected museum executive director.

History.
Acts 2017, ch. 200, § 1; 2018, ch. 821, § 12.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-12-114. Bill Haslam Center.

(a) The building that houses the Tennessee state museum located at 1000 Rosa L. Parks Boulevard is designated as the "Bill Haslam Center".

(b) The state museum shall erect suitable markers or affix suitable signs designating the museum as the "Bill Haslam Center". The state museum shall fund all costs related to the signage.

History.
Acts 2020, ch. 800, § 1.

Compiler's Notes.
For the Preamble to the act concerning Governor Haslam, see Acts 2020, ch. 800.

PART 2

MUSEUM INVENTORY ACT

4-12-201. Short title.

This part shall be known and may be cited as the "Museum Inventory Act."

History.
Acts 1983, ch. 214, § 1.

Cross-References.
Abandoned cultural property, title 66, ch. 29, part 2.

4-12-202. Exemption from inventory procedures.

It is the intention and purpose of the general assembly that the Tennessee state museum shall be exempted from inventorying its various collections under the rules established by the department of general services.

History.
Acts 1983, ch. 214, § 2.

4-12-203. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Tennessee state museum" means the facility operated as the military branch of the Tennessee state museum in the War Memorial Building, the facility in the James K. Polk Building, and the Bill Haslam Center located at 1000 Rosa L. Parks Boulevard; and

(2) "The various collections of articles, specimens and relics placed under the charge of the state museum executive director" means those collections owned and acquired by the state, the Tennessee Historical Society, Inc., or other entities.

History.
Acts 1983, ch. 214, § 3; 2018, ch. 821, § 13; 2020, ch. 800, § 2.

Compiler's Notes.
For the Preamble to the act concerning Governor Haslam, see Acts 2020, ch. 800.

PART 3

MUSEUM DONATION ACT

4-12-301. Short title.

This part shall be known and may be cited as the "Museum Donation Act."

History.
Acts 1983, ch. 420, § 1.

Cross-References.
Abandoned cultural property, title 66, ch. 29, part 2.

4-12-302. Tennessee state museum — Defined.

As used in this part, unless the context otherwise requires, "Tennessee state museum" means the facility operated as the military branch of the Tennessee state museum in the War Memorial Building, the facility located in the James K. Polk Building, and the Bill Haslam Center located at 1000 Rosa L. Parks Boulevard.

History.
Acts 1983, ch. 420. § 3; 2018, ch. 821, § 14; 2020, ch. 800, § 3.

Compiler's Notes.
For the Preamble to the act concerning Governor Haslam, see Acts 2020, ch. 800.

4-12-303. Powers of executive director.

It is the intention and purpose of the general assembly that the museum executive director be empowered to accept donations of funds and objects for the benefit of the Tennessee state museum.

History.
Acts 1983, ch. 420, § 2; 2018, ch. 821, § 15.

Cross-References.
Additional duties of museum director concerning gifts and contributions, § 4-12-102.

CHAPTER 13

HISTORIC PROPERTIES

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PART 1

THE HERMITAGE

4-13-101. Conveyance of property.

(a) All property belonging to the state and known as the "Hermitage Farm," consisting of approximately five hundred (500) acres, located in the fourth civil district of Davidson County, and being the same property referred to in Acts 1889, chapter 180, § 1 and being the same property acquired by the state by virtue of Acts 1856, chapter 96, be and the same is conveyed in trust to the Ladies' Hermitage Association, a corporation organized and chartered under the laws of the state.

(b) The association shall be deemed the successor in interest to the Ladies' Hermitage Association board of trustees and shall assume all rights, responsibilities and liabilities of such board of trustees.

History.
Acts 1935, ch. 79, § 1; C. Supp. 1950, § 4976 (Williams, § 4976, note); T.C.A. (orig. ed.), § 4-1301; Acts 1990, ch. 893, § 2.

Compiler's Notes.
The Ladies' Hermitage Association board of trustees terminated June 30, 1990. See §§ 4-29-112, 4-29-211.

Cross-References.
Abandoned cultural property, title 66, ch. 29, part 2.
Polk grave site, Jackson statue, § 4-11-209.

4-13-102. Object of trust creation — Definition.

(a) The object for which this trust is created is to permit and encourage the Ladies' Hermitage Association to preserve and beautify the property herein conveyed, in trust, and to keep the property in such state of preservation as the association may deem best so as to display the respect, love and affection that a grateful state and people cherish for their illustrious hero and statesman, Andrew Jackson.

(b)(1) It is furthermore the object of this trust to permit and encourage the association to do all things deemed necessary or advisable by the association to elucidate the history of the time of Andrew Jackson, his life and works and the place thereof in American history.

(2) These activities may include, but shall not be limited to, the support of scholarly publications and other educational activities, the acquisition of related real and personal property and the maintenance and exhibition thereof.

(3) Any property so acquired including, but not limited to, that property known as Tulip Grove, shall be held in trust in the same manner as the trust established for the Hermitage Farm in § 4-13-101.

(4) Except as otherwise provided in this part, the association has all rights and powers in and to the property conveyed in this part and any earnings or proceeds therefrom as though the property were conveyed in fee simple absolute.

(c) As used in this part, "association" means the Ladies' Hermitage Association.

History.
Acts 1889, ch. 239, § 2; 1923, ch. 27, § 2; 1990, ch. 893, § 3.

4-13-103. Conditions of conveyance.

The trust conveyance described in this part is subject to the following terms and conditions:

(1) The association may not mortgage, sell or otherwise transfer all or any part of the property conveyed in trust, with the exception of normal encumbrances for utility and other easements, without the permission of the state;

(2) The association shall maintain its records and financial accounts in conformity with generally accepted accounting principles, shall retain such records for a period of at least five (5) years after the close of the appropriate fiscal year, and shall make such records available for audit and review by the state upon request of the comptroller of the treasury or the comptroller's designated representative;

(3) The association shall undertake no substantial construction, altera-

tion or modification of any structure at the Hermitage until a copy of the plans and specifications therefor has been transmitted to the state architect or the state architect's representative; and

(4) Except as waived or modified by the state in light of the special needs of historic restoration and preservation activities, the association shall comply with all applicable state law and regulations in the use of funds appropriated by the general assembly.

History.
Acts 1889, ch. 239, § 1; 1980, ch. 469, § 1; 1990, ch. 893, § 4.

4-13-104. Reports furnished to state.

Except as otherwise provided in this part, the association shall be required to furnish only the following reports to the state, notwithstanding any law or regulation to the contrary:

(1) The association shall on an annual basis have prepared by an independent public accountant an audited financial report, which shall include, but not be limited to, a:

(A) Balance sheet;

(B) Statement of changes in fund balances; and

(C) Statement of revenues and expenditures;

(2) The association shall on an annual basis forward such audited financial report to the commissioner of finance and administration and the comptroller of the treasury;

(3) On an annual basis, the association shall provide to the state building commission a report on proposed property acquisition, construction, demolition, alteration, restoration or preservation works in progress, and a description of all such proposed acquisition, construction, demolition, alteration, restoration or preservation projects to be undertaken during the calendar year following the date of the report to the commission. Such reports shall include a description of the work, its purposes and sources of funding therefor. The commission shall have the authority to disapprove any property acquisition, construction, demolition, alteration, restoration or preservation project that is submitted for its review. No project may be initiated or continued without the approval of the commission;

(4) The state architect shall review all reports and specifications submitted to the commission pursuant to § 4-13-103(3). The state architect may disapprove any plan that does not conform substantially to the corresponding plan that was submitted to the commission pursuant to this section; and

(5)(A) The association shall submit to the commission a copy of its bylaws and purchasing procedures, and shall also submit thirty (30) days in advance of the effective date any changes in such bylaws or purchasing procedures that from time to time may be proposed;

(B) Any such bylaws, purchasing procedures or changes therein shall be deemed to have been accepted by the state thirty (30) days after receipt thereof by the commission;

(C) Upon request of any member of the commission, such bylaws,

purchasing procedures or changes therein shall be considered by the commission and approved or rejected on an expedited basis.

History.
Acts 1889, ch. 239, § 4; 1990, ch. 893, § 5.

4-13-105. Revocation of trust conveyance.

(a) In the event the association should at any time fail, neglect or refuse to preserve and beautify the premises as provided in § 4-13-102 or, in the event the association should fail to comply with the terms, conditions and reporting requirements of this part, or for any other reason, the state may revoke this trust, and, the property conveyed to the association by § 4-13-101 or acquired pursuant to § 4-13-102 shall revert and go back to the state without compensation to the association or any other person or persons, and the state shall not be required to pay any money whatever for any improvements that may have been erected on the land conveyed herein in trust.

(b) In the event that the state decides to revoke this trust conveyance, it shall transmit to the association notice thereof signed by the governor or the governor's designee, the attorney general and reporter, the comptroller of the treasury, and the speakers of the senate and house of representatives, such notice to be effective upon receipt.

History.
Acts 1937, ch. 120, § 1; C. Supp. 1950, § 4988.1; T.C.A. (orig. ed.), § 4-1303; Acts 1983, ch. 96, §§ 3, 4; 1990, ch. 893, § 6.

4-13-106 — 4-13-108. [Reserved.]

4-13-109. Trust property not state property.

(a) Notwithstanding any law to the contrary, the property conveyed in trust by § 4-13-101 or acquired pursuant to § 4-13-102 shall not be subject to controls applicable to state property until the effective date of any revocation of this trust conveyance.

(b) Nothing in this part shall be construed to prohibit the state from providing liability, comprehensive or other insurance or any other thing of value to the association for the benefit of the property conveyed herein in trust.

History.
Acts 1990, ch. 893, § 9; 2003, ch. 163, § 1.

4-13-110. Conveyance of all interest of board of trustees.

The right, title and interest of any real or personal property or rights of the Ladies' Hermitage Association board of trustees that have not already been conveyed to the association are hereby transferred and conveyed to the association, a corporation organized and chartered under the laws of this state, subject to the trust terms and conditions set forth in this part.

History.
Acts 1990, ch. 893, § 10.

4-13-111. Open meetings.

Meetings of the association and its board of directors shall be open to the public.

History.
Acts 1990, ch. 893, § 11.

Cross-References.
Open meetings law, Title 8, ch. 44.

PART 2

JAMES K. POLK HOME

4-13-201. Property conveyed to association.

There is hereby conveyed in trust to the James K. Polk Memorial Association, a corporation organized under the laws of Tennessee, for the general welfare and not for profit, and its successors in trust, a tract of land in the second ward of the city of Columbia, located on the corner of West Seventh Street and South High Street, known as the James K. Polk Home, being the same land conveyed to the state by George L. Reynolds and Bessie F. Reynolds, his wife, by deed dated January 8, 1929, recorded in the registrar's office of Maury County, Tennessee, book 177, page 71.

History.
Acts 1929, ch. 110, § 1.

Compiler's Notes.
The James K. Polk memorial association, created by this section, terminates June 30, 2027. See §§ 4-29-112, 4-29-248.

Cross-References.
Polk grave site, Jackson statue, § 4-11-209.

4-13-202. Purposes of conveyance in trust.

This conveyance in trust is made so that the James K. Polk Memorial Association shall restore and preserve the property herein conveyed as a permanent memorial to James K. Polk, governor of Tennessee and eleventh president of the United States, and as a shrine of American patriotism.

History.
Acts 1929, ch. 110, § 2.

4-13-203. Annual report to governor.

The James K. Polk Memorial Association shall make an annual report to the governor of its performance of the duties herein imposed, and of its compliance with the terms of the uses and trusts herein created.

History.
Acts 1929, ch. 110, § 3.

4-13-204. Revocability of trust.

In the event the James K. Polk Memorial Association or its successors in trust shall fail to execute the provisions of this trust, the trust shall be terminable by the general assembly.

History.
Acts 1929, ch. 110, § 4.

PART 3

SAM DAVIS HOME

4-13-301. Property conveyed in trust — Appointment of trustees.

(a) The tract of land, being the same purchased from O.M. Davis, Jr., in 1927, by the Sam Davis Commission in the name of the state of Tennessee, be and is hereby conveyed in trust to the Sam Davis Memorial Association.

(b) The governor shall appoint, upon recommendation of the Sam Davis Memorial Association, nine (9) persons over the age of eighteen (18) years, who shall constitute the board of trustees of the Sam Davis Memorial Association.

History.
Acts 1931, ch. 92, § 1; 1980, ch. 469, § 2.

Compiler's Notes.
The Sam Davis memorial association, board of trustees, created by this section, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2018, ch 782, § 1 provided that pursuant to Tennessee Code Annotated, § 4-13-307, the trust created by Tennessee Code Annotated, § 4-13-301 is hereby revoked in part, such partial revocation to apply to the following property:

A parcel of land in the Town of Smyrna, Rutherford County, Tennessee, bounded on the north and west by the remaining land of the Sam Davis Memorial Association (map 27, parcel 6.00), on the east by the west right-of-way for Nissan Drive and on the south by the north right-of-way for Sam Davis Road, being described as follows:

Beginning at a point at the intersection of the north right-of-way for Sam Davis Drive and the west right-of-way for Nissan Drive; thence with the north right-of way for Sam Davis Drive, westerly, 52 feet more or less; thence with a new line severing the lands of the Sam Davis Memorial Association, being parallel with the west right-of-way for Nissan Drive, northerly 678 feet more or less; thence easterly, 275 feet more or less to a point in the west right-of-way for Nissan Drive; thence with the west right-of-way of Nissan Drive, in a southerly direction, 450 feet, more or less to the beginning of a curve to the right; thence with the west right-of-way for Nissan Drive, with a curve to the right, 353 feet more or less to the point of beginning, having an area of 4 acres, more or less.

Acts 2018, ch 782, § 2 provided that § 1 of the act shall be effective only upon the Sam Davis Association obtaining a waiver under the Tennessee Heritage Protection Act from the Tennessee Historical Commission, pursuant to Tennessee Code Annotated, § 4-1-412. If the Sam Davis Association is granted a waiver, then the property described in § 1 reverts to the Sam Davis Memorial Association and does not revert to this state. The Sam Davis Memorial Association may sell the property and use the proceeds to finance repairs and upkeep of the property remaining in the trust.

4-13-302. Object of trust creation.

The object for which this trust is created is to permit and encourage the Sam Davis Memorial Association to improve and beautify the Sam Davis home and other houses and grounds, in such manner as it may deem best, and to keep them in such high state of improvement and beauty, as will display to the world the respect, love and affection that should ever live in the hearts of an admiring people for their departed boy hero of the Confederacy.

History.
Acts 1931, ch. 92, § 2.

4-13-303. Trustees — Officers — Quorum.

(a) The trustees shall elect one (1) of their members as president and one (1) of their members secretary.

(b) Five (5) members shall constitute a quorum for the transaction of business, and the board of trustees is hereby authorized and empowered to enforce such bylaws as may be necessary to put into operation and continual execution the objects and purposes for which this trust is created.

History.
Acts 1931, ch. 92, § 1.

4-13-304. Trustees' tenure — Vacancies.

The trustees appointed as provided in § 4-13-301 shall each hold such trustee's office for four (4) years, and until such trustee's successor is appointed and qualified, and all vacancies by death, removal or expiration of term or otherwise, shall be filled by the governor upon recommendation of the Sam Davis Memorial Association as provided in § 4-13-301.

History.
Acts 1931, ch. 92, § 4.

4-13-305. Appropriation.

There is hereby appropriated the sum of one thousand eight hundred dollars ($1,800) per annum for the maintenance or upkeep, or both, of the Sam Davis home, to be paid out of any funds in the treasury not otherwise appropriated, upon the warrant of the comptroller of the treasury, approved by the president of the board of trustees of the Sam Davis Memorial Association.

History.
Acts 1931, ch. 92, § 3.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-13-306. Reversion of property — Conditions.

In the event the Sam Davis Memorial Association should at any time fail, neglect or refuse to improve the houses and grounds, and to keep them in a high state of beauty and improvement, then the houses and land and such other improvements as may be upon the grounds shall revert to the state of Tennessee without compensation to the trustees, Sam Davis Memorial Association or other corporation or person. The state shall not be required to pay any money whatever for such improvements as the trustees, Sam Davis Memorial Association or other person or persons may have made upon the houses or lands.

History.
Acts 1931, ch. 92, § 3.

4-13-307. Revocability of trust.

The state may revoke this trust at will.

History.
Acts 1931, ch. 92, § 4.

Compiler's Notes.
Acts 2018, ch 782, § 1 provided that pursuant to Tennessee Code Annotated, § 4-13-307, the trust created by Tennessee Code Annotated, § 4-13-301 is hereby revoked in part, such partial revocation to apply to the following property:

A parcel of land in the Town of Smyrna, Rutherford County, Tennessee, bounded on the north and west by the remaining land of the Sam Davis Memorial Association (map 27, parcel 6.00), on the east by the west right-of-way for Nissan Drive and on the south by the north right-of-way for Sam Davis Road, being described as follows:

Beginning at a point at the intersection of the north right-of-way for Sam Davis Drive and the west right-of-way for Nissan Drive; thence with the north right-of way for Sam Davis Drive, westerly, 52 feet more or less; thence with a new line severing the lands of the Sam Davis Memorial Association, being parallel with the west right-of-way for Nissan Drive, northerly 678 feet more or less; thence easterly, 275 feet more or less to a point in the west right-of-way for Nissan Drive; thence with the west right-of-way of Nissan Drive, in a southerly direction, 450 feet, more or less to the beginning of a curve to the right; thence with the west right-of-way for Nissan Drive, with a curve to the right, 353 feet more or less to the point of beginning, having an area of 4 acres, more or less.

Acts 2018, ch 782, § 2 provided that § 1 of the act shall be effective only upon the Sam Davis Association obtaining a waiver under the Tennessee Heritage Protection Act from the Tennessee Historical Commission, pursuant to Tennessee Code Annotated, § 4-1-412. If the Sam Davis Association is granted a waiver, then the property described in § 1 reverts to the Sam Davis Memorial Association and does not revert to this state. The Sam Davis Memorial Association may sell the property and use the proceeds to finance repairs and upkeep of the property remaining in the trust.

PART 4

CRAGFONT

4-13-401. Purchase of property.

The Tennessee historical commission, as defined by chapter 11, part 1 of this title, is hereby authorized and empowered to use any funds appropriated or available to the commission to purchase and acquire a tract of land in Sumner County, on which is located Cragfont, the home of General James Winchester, for a sum not to exceed thirty thousand dollars ($30,000).

History.
Acts 1957, ch. 268, § 2.

4-13-402. Expenditures for repair, restoration and renovation.

(a) The Tennessee historical commission is authorized to expend any funds appropriated or available to it in the repair, renovation and restoration of the mansion house, Cragfont, and the improvement of the premises for use by the general public as a park, as picnic grounds, and for other related purposes.

(b) The commission is authorized, in lieu of contracting itself for the repair, renovation and restoration of the mansion house, to authorize the Sumner County Chapter of the Association for the Preservation of Tennessee Antiquities to contract for same, within the limit of the funds set aside for such purpose, and to furnish the funds to the Sumner County Chapter of the

Association for the Preservation of Tennessee Antiquities, to be used for that purpose, under such safeguards as the commission may prescribe.

History.
Acts 1957, ch. 268, § 4; 1959, ch. 257, § 1.

4-13-403. [Reserved.]

4-13-404. Actual custody and control of property.

The Tennessee historical commission shall hold legal title to the property, but is authorized and empowered to assign the actual custody and control of the property to a Tennessee not-for-profit corporation organized for the express purpose of restoring, maintaining and operating Cragfont; provided, that such not-for-profit corporation was in existence as of July 1, 1995. Any such corporation shall have the right to operate and manage the property on behalf of the Tennessee historical commission for the benefit of the general public, and to keep the property and improvements in a high state of improvement and repair, and to operate and maintain the grounds improved by the Tennessee historical commission in a manner consistent with such guidelines as may be promulgated by the Tennessee historical commission, or as the Tennessee historical commission shall contract with the corporation.

History.
Acts 1957, ch. 268, § 5; 1997, ch. 32, § 1.

4-13-405. Continued operation as museum house.

It is the intent of this part that Cragfont shall continue to be operated as a museum house open to the general public and preserved for the citizens of Tennessee and future generations.

History.
Acts 1957, ch. 268, § 6; 1997, ch. 32, § 1.

PART 5

MCCAMPBELL HOUSE

4-13-501. Expenditure of funds.

(a) The Tennessee state museum is authorized to expend any funds appropriated or available to it in the administration, operation, maintenance, repair, renovation and restoration of the mansion home, McCampbell House in Donelson, that was bequeathed to the museum and for the improvement of the premises.

(b) The museum is authorized, in lieu of contracting itself for the repair, renovation and restoration of the mansion house, to authorize an appropriate organization to contract for the same, within the limit of the funds set aside for such purpose, and to furnish the funds to such organization, to be used for that purpose, under such safeguards as the museum may prescribe.

History.
Acts 2010, ch. 877, § 2.

Compiler's Notes.
Former part 5, §§ 4-13-501 — 4-13-506 (Acts 1977, ch. 258, §§ 1-5), concerning the Fort Loudoun memorial, was repealed by Acts 1987, ch. 109, § 2(b).

4-13-502. Administration, operation and maintenance.

The Tennessee state museum shall hold legal title to the property, but is authorized and empowered to assign the actual custody and control of the property to a Tennessee not-for-profit corporation organized for the express purpose of restoring, maintaining and operating the McCampbell House. Any such corporation shall have the right to operate and manage the property on behalf of the Tennessee state museum for the benefit of the general public, and to keep the property and improvements in a high state of improvement and repair, and to operate and maintain the grounds improved by the Tennessee state museum in a manner consistent with such guidelines as may be developed by the Tennessee state museum, or as the Tennessee state museum shall contract with the corporation.

History.
Acts 2010, ch. 877, § 3.

Compiler's Notes.
Former part 5, §§ 4-13-501 — 4-13-506 (Acts 1977, ch. 258, §§ 1-5), concerning the Fort Loudoun memorial, was repealed by Acts 1987, ch. 109, § 2(b).

PART 6

CORDELL HULL BIRTHPLACE

4-13-601. [Reserved.]

4-13-602. Administration, operation and maintenance.

(a) The administration, operation and maintenance of the Cordell Hull birthplace and all surrounding property that have been deeded to the state are hereby vested in the department of environment and conservation, division of parks and recreation.

(b) The department shall promulgate such rules and regulations as are necessary for the efficient operation, administration, and maintenance of the Cordell Hull birthplace.

(c) One (1) seasonal, full-time park manager position and one (1) full-time custodial position shall be created and funded within the department for the operation and management of the Cordell Hull birthplace. The department shall establish qualifications for such positions and employ appropriate personnel to perform the duties and functions of such positions.

History.
Acts 1989, ch. 584, § 2; 1997, ch. 401, §§ 2, 4.

4-13-603. Expenditure of funds.

The department of environment and conservation is authorized to expend any funds appropriated or available to it in the administration, operation,

maintenance, repair, renovation or restoration of the Cordell Hull birthplace and all surrounding property that have been deeded to the state.

History.
Acts 1989, ch. 584, § 3; 1997, ch. 401, § 3.

4-13-604. Designation of personnel — Rules and regulations.

The department of environment and conservation has the right to designate the personnel who shall have actual charge of the premises and has the right to promulgate rules and regulations with respect to the Cordell Hull birthplace.

History.
Acts 1989, ch. 584, § 4; 1997, ch. 401, § 6.

4-13-605. Historical papers and correspondence — Removal of papers or letters.

(a) The department of environment and conservation may enter into all necessary agreements with the state library and archives to ensure the preservation of the historical papers and personal correspondence of Cordell Hull for posterity.

(b) No historical paper or item of personal correspondence shall be removed from the Cordell Hull birthplace without the express written consent of the Friends of Cordell Hull, the successor organization to the Cordell Hull Birthplace and Memorial Association and the true owner of such collection. The Friends of Cordell Hull may, in consultation with the department, develop and implement policies and guidelines for the loan or other removal of such historical papers and items of personal correspondence from the Cordell Hull birthplace. Such historical papers and items of personal correspondence may only be removed from the site with the stipulation, agreed to by the Friends of Cordell Hull and the borrower, of a specific date for the return of such item or items.

History.
Acts 1989, ch. 584, § 5; 1997, ch. 401, § 5.

PART 7

GENERAL PROVISIONS

4-13-701. Sale or transfer of land containing historically significant buildings or adjacent to such land.

Notwithstanding any other law to the contrary, subject to the approval by the state building commission, the state is authorized to sell or negotiate a transfer of any parcel of land that contains a building having historical significance, or is immediately adjacent to a parcel of land that contains a building having historical significance under the following conditions:

(1) No public funds are being appropriated for maintenance or preservation of the property;

(2) The state is not maintaining or preserving the property; and
(3) The use of the property is not available to the general public.

History. Acts 1996, ch. 960, § 1; T.C.A. § 4-13-1001.

Code Commission Notes. This section was renumbered from § 4-13-1001 to § 4-13-701 by the authority of the Code Commission in 2021.

4-13-702. Qualifying nonprofit organizations.

Properties specified in § 4-13-701 shall be sold or transferred to a nonprofit organization that has the capability and plans to maintain and preserve the property and to open the property for general viewing of or other use by the general public.

History. Acts 1996, ch. 960, § 1; T.C.A. § 4-13-1002.

Code Commission Notes. This section was renumbered from § 4-13-1002 to § 4-13-702 by the authority of the Code Commission in 2021.

CHAPTER 14

INDUSTRIAL DEVELOPMENT

Part 1. General Provisions

Section
4-14-101, 4-14-102. [Reserved.]
4-14-103. Industrial development division — Staff — Offices — Interagency cooperation.
4-14-104. Industrial development division — Travel expenses.
4-14-105. Department of economic and community development — Duties.
4-14-106. Department of economic and community development — Powers.
4-14-107. Industrial development division — Appropriation.
4-14-108. Industrial development division — Building finance committee.

Part 2. Tennessee Technology Development Corporation

4-14-201. Corporation established.
4-14-202. Charter and bylaws — Review — Hearing.
4-14-203. Board of directors — Officers.
4-14-204. Contents of articles and bylaws.
4-14-205. Functions of corporation.
4-14-206. Corporate debts.
4-14-207. Duration of certification.
4-14-208. Confidentiality of records.
4-14-209. Rules and regulations.

PART 1

GENERAL PROVISIONS

4-14-101, 4-14-102. [Reserved.]

4-14-103. Industrial development division — Staff — Offices — Interagency cooperation.

(a) The industrial development division of the department of economic and community development may appoint and fix the compensation of such employees as it may deem necessary for its work. The division may also

contract with industrial engineers and other consultants for such services as it may require.

(b) The division shall be supplied with the necessary office space, accommodations and necessary equipment.

(c) Upon request of the division, the governor may, from time to time, for the purpose of special surveys under the direction of the division, assign or detail to the division any member of any state administrative department or bureau or agency, or may direct any such department, bureau or agency to make for the division special surveys or studies requested by the division.

History.
Acts 1953, ch. 219, § 2 (Williams, § 1016.10); impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1402.

Cross-References.
Industrial development, powers and duties of department of economic and community development, § 4-3-706.

4-14-104. Industrial development division — Travel expenses.

In the event the director of the industrial development division, or the director's authorized representative, travels within or without the state for the purpose of promoting industrial development, the director shall certify the director's expense voucher, or the voucher of the director's authorized representative, as all other expense vouchers are certified for payment, but the same shall receive immediate and preferred attention by the commissioner of finance and administration, in view of the expected travel expense of the director or the director's representative.

History.
Acts 1953, ch. 219, § 2 (Williams, § 1016.10); impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1403.

4-14-105. Department of economic and community development — Duties.

It is the duty and function of the department of economic and community development to:

(1) Promote in a sound manner the location of additional industries and businesses in the state, to utilize the state's resources to the best advantage and to increase employment opportunities for all elements of the state's population;

(2) Aid and encourage the existing industries of the state; and

(3) Cooperate with existing state and federal agencies and local governments and agricultural, business, industrial and educational interests of the state in promotion of industrial development in this state.

History.
Acts 1953, ch. 219, § 3 (Williams, § 1016.11); impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1404; Acts 1985, ch. 256, § 4.

4-14-106. Department of economic and community development — Powers.

To achieve the aims stated in § 4-14-105, the department of economic and

community development is authorized to:

(1) Undertake studies and research of the state's industrial resources, industrial opportunities, potentialities and problems affecting industrial growth;

(2) Disseminate information in the interest of industrial development by publication, advertisement and other means;

(3) Provide advice and technical assistance to existing, prospective and potential industries, to local governments, chambers of commerce and other agencies, groups and individuals in the promotion of the general aims of this chapter; and

(4) Cooperate with the University of Tennessee and other institutions of higher learning, technological and trade schools and the public schools of the state in the interest of industrial experimentation and education.

History.

Acts 1953, ch. 219, § 3 (Williams, § 1016.11); impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1405; Acts 1985, ch. 256, § 5.

4-14-107. Industrial development division — Appropriation.

There is hereby appropriated for expenditure by the industrial development division from funds in the state treasury not otherwise appropriated the sum of seventy-five thousand dollars ($75,000) per annum.

History.

Acts 1953, ch. 219, § 4 (Williams, § 1016.12); impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1406; Acts 1980, ch. 887, § 3; 1985, ch. 256, § 3.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-14-108. Industrial development division — Building finance committee.

(a) There is created in the industrial development division, referred to in this section as the "division," a building finance committee referred to in this section as the "committee," which shall exercise the powers and duties and discharge the responsibilities enumerated in this section and in title 7, chapters 53 and 55 for such committee, subject to such review and rules and regulations as may be prescribed by the division.

(b) The committee shall consist of the vice chair of the former Tennessee board of economic growth, serving ex officio as chair of the committee, and six (6) additional members appointed by the governor, two (2) from each of the three (3) grand geographical divisions of the state, who shall be competent to serve on the committee by reason of experience in the fields of investment finance or industry.

(c) The term of each appointive member shall be four (4) years.

(d) Any vacancy in the appointive membership shall be filled by the governor for the unexpired term.

(e) The members of the committee shall serve without pay, except for actual expenses incurred in the course of attending to the official business of the committee.

(f) The director of the division shall serve as secretary of the committee, and such additional staff may be assigned or employed as may be deemed necessary by the committee, to carry out effectively title 7, chapters 53 and 55.

(g) A majority of the members of the committee shall constitute a quorum for the transaction of any and all business of the committee, and one (1) member shall be designated as a vice chair to preside at meetings and otherwise act as chair in the absence of the chair.

(h) All orders, findings, acts and certificates of the committee shall be attested by the signature of the chair or vice chair, and the secretary, and when so attested, all orders, acts, findings and certificates of the committee shall be competent evidence and shall be given full faith and credit in any court or proceeding, and unless affirmatively shown to the contrary, it shall be presumed that the proceedings of the committee were in all things regular.

(i) The secretary, or in the secretary's absence, some person designated by the secretary to act in the secretary's place, shall keep regular and accurate minutes of the committee's proceedings, in a minute book provided for that purpose, which shall be a public record, and all orders, findings and acts of the committee shall be entered upon its minutes.

(j) The committee is authorized and empowered to use and expend such funds as may be made available for its purposes by the staff division.

(k) The committee shall hold regular meetings at the offices of the division, and at such other times and places as its duties may require, with the express authority to adjourn or recess from time to time, and place to place, and to convene special meetings by unanimous consent.

(*l*) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(m) The committee shall adopt and implement a conflict of interest policy for committee members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by committee members that they have read and understand all aspects of the policy. The policy shall also require persons who are to be appointed to the committee to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

History.

Acts 1955, ch. 210, § 13; impl. am. Acts 1963, ch. 169, § 2; impl. am. Acts 1972, ch. 852, §§ 12, 13; Acts 1976, ch. 806, § 1 (44); T.C.A., §§ 4-1401, 4-1408; Acts 2013, ch. 252, § 4; T.C.A. 4-14-109.

Compiler's Notes.

The industrial development division, building finance committee, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

The Tennessee board of economic growth, referred to in this section, was repealed by Acts 2009, ch. 105, § 3, effective April 27, 2009.

Code Commission Notes. Former § 4-14-108 (Acts 1953, ch. 219, § 5 (Williams, § 1016.13); impl. am. Acts 1963, ch. 169, § 2; modified; impl. am. Acts 1972, ch. 852, § 12; T.C.A. (orig. ed.), § 4-1407), concerning industrial development division and the publications of planning commission, was deemed obsolete and was deleted by the code commission in 2005.

This section was renumbered from § 4-14-109 to § 4-14-108 by the authority of the Code Commission in 2021.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

PART 2

TENNESSEE TECHNOLOGY DEVELOPMENT CORPORATION

4-14-201. Corporation established.

There is hereby established, to carry out the purposes of this chapter, a private not-for-profit corporation to be known as the "Tennessee technology development corporation dba Launch Tennessee" and, in this part, as "the corporation".

History.
Acts 1997, ch. 517, § 2; 2018, ch. 662, § 1; T.C.A. § 4-14-301.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
The Tennessee technology development corporation, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-202. Charter and bylaws — Review — Hearing.

If the corporation satisfies the conditions imposed by § 4-14-204 and title 48, chapter 51, the corporation shall perform the functions enumerated in § 4-14-205. Before delivering a charter to the secretary of state for filing, the department of economic and community development shall conduct a public hearing for the purpose of giving all interested parties an opportunity to review and comment upon the charter, bylaws, and methods of operation of the corporation. Notice of the hearing shall be given at least thirty (30) days prior to the hearing by publishing a written advertisement of such hearing in newspapers of general circulation in Nashville, Memphis, Chattanooga, Knoxville and the Tri-Cities area.

History.
Acts 1997, ch. 517, § 3; T.C.A. § 4-14-302.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-203. Board of directors — Officers.

(a) The corporation shall be governed by a board of directors consisting of twenty-two (22) natural persons.

(b) Fourteen (14) members of the board of directors shall represent and be appointed from the private sector. Three (3) representatives of the private sector shall be appointed by the governor, two (2) representatives shall be appointed by the speaker of the house of representatives, two (2) representatives shall be appointed by the speaker of the senate, and seven (7) represen-

tatives from the private sector shall be nominated by the board of directors' nominating committee and approved by majority vote of the board of directors.

(c) Seven (7) members of the board of directors shall represent and be appointed from the public sector. Three (3) representatives of the public sector shall be appointed by the governor, two (2) representatives shall be appointed by the speaker of the house of representatives and two (2) representatives shall be appointed by the speaker of the senate. One (1) representative of the public sector appointed by the governor may be selected from lists of qualified persons submitted by interested municipal and county organizations including, but not limited to, the Tennessee municipal league and the Tennessee county services association. The governor shall consult with such interested organizations to determine a qualified person to fill the position on the board.

(d) The commissioner of economic and community development shall serve ex officio on the board of directors of the corporation.

(e) The corporation shall elect a chair, vice chair, secretary and such other officers as it deems necessary from among its members.

(f) One (1) representative of the private sector and one (1) representative of the public sector appointed by the governor shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the speaker of the house of representatives shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the speaker of the senate shall initially serve a two-year term. Three (3) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a two-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the governor shall initially serve a three-year term. One (1) representative of the private sector appointed by the speaker of the senate and one (1) representative of the public sector appointed by the speaker of the house of representatives shall initially serve a three-year term. Two (2) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a three-year term. One (1) representative of the private sector and one (1) representative of the public sector appointed by the governor shall initially serve a four-year term. One (1) representative of the private sector appointed by the speaker of the house of representatives and one (1) representative of the public sector appointed by the speaker of the senate shall initially serve a four-year term. Two (2) representatives from the private sector nominated by the board of directors' nominating committee and approved by majority vote of the board of directors shall initially serve a four-year term. After the initial appointments, all members shall serve four-year terms, except the commissioner of economic and community development who shall serve by virtue of such office, and the two (2) members of the former Tennessee science and technology advisory council who shall serve according to their respective terms on the council. Board members are eligible to serve successive terms if reappointed by the original authority.

(g) The board of directors shall appoint an executive committee of five (5) of its members to administer the day-to-day operations of the corporation. The

chair of the corporation shall also serve as the chair of the executive committee.

(h) The board of directors shall not meet more than eight (8) times in a calendar year. The executive committee shall not meet more than four (4) times in a calendar year.

(i) In making appointments to the board of directors, the governor, speaker of the house of representatives and the speaker of the senate shall consider the racial diversity of the board of directors in order to ensure that representatives selected reflect the racial composition of this state.

(j) The board of directors shall adopt and implement a conflict of interest policy for board members. The policy shall mandate annual written disclosures of financial interests, other possible conflicts of interest, and an acknowledgement by board members that they have read and understand all aspects of the policy. The policy shall also require persons who are to be appointed to the board of directors to acknowledge, as a condition of appointment, that they are not in conflict with the conditions of the policy.

History.
Acts 1997, ch. 517, § 4; 2002, ch. 743, §§ 1-4; 2007, ch. 105, §§ 1, 2; 2012, ch. 620, § 3; 2013, ch. 252, § 3; T.C.A. § 4-14-303.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

The Tennessee science and technology advisory council, referred to in this section, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-204. Contents of articles and bylaws.

The articles and bylaws shall provide that:

(1) The purpose of the corporation is to strengthen the economy of the state through the development of an entrepreneurial ecosystem that can support potential high-growth businesses, with a particular focus on technology-enabled small businesses;

(2) The corporation may receive money from any source, may borrow money, may enter into contracts, and may expend money for any activities appropriate to its purpose;

(3) The corporation may appoint staff and do all other things necessary or incidental to carrying out the functions listed in § 4-14-205;

(4) Any changes in the articles of incorporation or bylaws shall be approved by the general assembly;

(5) The corporation shall submit an annual report to the governor and to the general assembly, such report is due on November 1 of each year and shall include detailed information on the structure, operation, and financial status of the corporation. The corporation shall conduct an annual public hearing to receive comments from interested parties regarding the report. Notice of such hearing shall be given at least thirty (30) days before the hearing; and

(6) The corporation is subject to an annual audit by the comptroller of the treasury, and that the corporation shall bear the full costs of this audit.

History.
Acts 1997, ch. 517, § 5; 2018, ch. 662, § 2; T.C.A. § 4-14-304.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-14-205. Functions of corporation.

The corporation, after being certified by the secretary of state, shall:

(1) Support entrepreneur centers or small business support groups committed to providing business and technical assistance to current and aspiring entrepreneurs across the state;

(2) Promote or direct activities aimed at driving innovation and entrepreneurship in pursuit of economic growth in the state's key business sectors;

(3) Identify, develop, and administer funding or services crucial for early-stage business growth and development, including public or private funding or services, grants, loans, or equity;

(4) Develop and administer capital programs that will strengthen the state's investing climate;

(5) Lead or support efforts to increase the amount of early-stage capital available for investment in small businesses;

(6) Foster cooperative and collaborative associations between universities, research organizations, corporations, and individuals that will enhance technology transfer opportunities and lead to the creation of new products, services, and jobs in Tennessee; and

(7) Promote entrepreneurship in Tennessee by building awareness of activities, programs, and small business outcomes with media across the state, region, and country.

History.
Acts 1997, ch. 517, § 6; 2007, ch. 105, § 3; 2016, ch. 887, § 1; 2018, ch. 662, § 3; T.C.A. § 4-14-305.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-206. Corporate debts.

Debts incurred by the corporation under authority of this chapter do not represent or constitute a debt of the state within the meaning of the Constitution of Tennessee or Tennessee Code Annotated.

History.
Acts 1997, ch. 517, § 7; T.C.A. § 4-14-306.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts

1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-207. Duration of certification.

The certification by the secretary of state pursuant to § 4-14-202 shall remain in effect until the general assembly provides for termination of such certification.

History.
Acts 1997, ch. 517, § 8; T.C.A. § 4-14-307.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

4-14-208. Confidentiality of records.

Any documentary materials or data made or received by any member or employee of the corporation to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render, or regarding the competitive position of such applicant in a particular field of endeavor, shall not be deemed public records and shall not be subject to title 10, chapter 7; provided, that if the corporation purchases a qualified security from such applicant, the commercial and financial information, excluding trade secrets, shall be deemed to be a public record of the corporation and subject to title 10, chapter 7, after the expiration of seven (7) years from the date of purchase of such qualified security, or, in the case of such information being made or received by any member or employee of the corporation after the purchase of such qualified security, seven (7) years from the date such information was made or received. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the board, or any subcommittee of the board, in executive sessions closed to the public. All applications (except the identity of the applicants) and supporting documentary materials or data, including personal financial records, trade secrets, commercial or financial information and proprietary information of applicants, and all executive sessions or portions thereof conducted by the board, or any subcommittee of the board, for the purpose of reviewing applications for assistance shall be confidential and exempt from title 8, chapter 44.

History.
Acts 1997, ch. 517, § 9; 2018, ch. 662, § 4; T.C.A. § 4-14-308.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-14-209. Rules and regulations.

The commissioner of economic and community development shall be authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 1997, ch. 517, § 10; T.C.A. § 4-14-309.

Code Commission Notes. Part 3, §§ 4-14-301 — 4-14-309 was renumbered as part 2, §§ 4-14-201 — 4-14-209, by authority of the Code Commission in 2021.

Compiler's Notes.
Former part 2, §§ 4-14-201 — 4-14-210 (Acts 1993, ch. 355, §§ 1, 2), concerning the Tennessee science and technology advisory council, was repealed by Acts 2005, ch. 465, § 2, effective June 18, 2005.

CHAPTER 15
STATE BUILDING COMMISSION

Section
4-15-101. Creation — Membership — Terms.
4-15-102. Powers and duties.
4-15-103. Expenses of commission members — Administrative personnel — State architect.
4-15-104. Rules and regulations for construction.
4-15-105. Bidding in large counties — Bidding in East and West Tennessee.
4-15-106. Enforcement of other statutes.
4-15-107. Chapter definitions.

4-15-101. Creation — Membership — Terms.

(a)(1) There is created a state building commission composed of seven (7) ex officio members who shall be the governor, the secretary of state, the comptroller of the treasury, the state treasurer, the commissioner of finance and administration, the speakers of the senate and the house of representatives.

(2) The governor shall serve as chair and the commission shall elect from its membership a vice chair and secretary.

(b) The attorney general and reporter shall serve as legal counsel to the commission in accordance with the requirements of § 8-6-301.

(c) In the event that the voting membership of any ex officio members is found by a court of competent jurisdiction to be unconstitutional or invalid, they shall continue as ex officio nonvoting members, and in addition, the senate and house of representatives shall by joint resolution appoint another person or persons to be a voting member or members.

History.
Acts 1955, ch. 304, § 1; 1967, ch. 111, § 1; T.C.A., § 4-1501; Acts 1980, ch. 741, § 2; 1982, ch. 810, § 5; 1982, ch. 915, §§ 1, 2.

Code Commission Notes. Acts 1982, ch. 915, § 2, provided: "If any clause, words, provisions or sections of this act, including any provisions for the membership of the commission, are found to be unconstitutional or invalid, it is the intent of the general assembly that the remainder of this act be upheld and that the commission continue to function with the remainder of the membership not held to be unconstitutional or invalid."

Compiler's Notes.
The state building commission, created by this section, terminates June 30, 2026. See §§ 4-29-112, 4-29-247.

Acts 2014, ch. 945, § 3 provided that the state building commission shall appear before

the joint government operations subcommittee on judiciary and government no later than December 31, 2014, to update the subcommittee on the status of the issues raised in the commission's 2013 governmental entity review hearing.

Cross-References.

Review prior to demolishing, altering or transferring historically, architecturally or culturally significant state property, § 4-11-111.

4-15-102. Powers and duties.

(a) The commission has the power and authority, except as otherwise provided in this chapter, to approve and supervise all projects involving:

(1) Any improvement to real property funded by public or private funds or both in which the state or any of its departments, institutions or agencies has an interest;

(2) The demolition of any building or structure located on real property in which the state or any of its departments, institutions or agencies has an interest, or the demolition of any building or structure by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee, provided such building or structure when constructed or acquired was originally approved by the commission pursuant to this section, except for the demolition of any building or structure acquired by the department of transportation for highway rights-of-way; and

(3) Any improvement to real property in excess of five hundred thousand dollars ($500,000) by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee, the operation of which will be, or is intended by the foundation to be or become, the responsibility of the University of Tennessee or any institution of the state university and community college system of Tennessee. The intent of the foundation to retain operation of the improvement or to transfer operations to the state shall be contained in the records of the foundation.

(b)(1) No contract for the improvement of real property in which the state or any of its departments, institutions or agencies has an interest, and no contract for the demolition of any building or structure on real property in which the state or any of its departments, institutions or agencies has an interest shall be awarded until the plans therefor have been submitted to and approved by the commission.

(2) This subsection (b) shall not apply to the demolition of any building or structure acquired by the department of transportation for highway rights-of-way.

(3) This subsection (b) shall apply to improvements or demolitions of any building or structure approved by the commission pursuant to this section by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee.

(c)(1)(A) The commission, using procedures that promote competition to the greatest extent possible, has the power and authority to advertise and award contracts relating to the projects described in subsection (a), including contracts for construction, erection or demolition and contracts

to furnish, install or provide goods or materials that are incidental to projects that are within the jurisdiction of the commission.

(B) The commission also has the power and authority to award contracts for professional design, surveying or planning services relating to the projects described in subsection (a), following procedures of the commission.

(C) This subsection (c) shall not apply to contracts made by the department of transportation pursuant to title 54, chapter 5.

(2) Any rule, regulation, specification or policy of the commission promulgated pursuant to this subsection (c) that restricts eligibility to bid on a project to the manufacturer of the material to be utilized in such project shall be waived, if in the discretion of the commission:

(A) The person, company, corporation or other entity submitting a bid offers a warranty or guarantee substantially equivalent to the warranty or guarantee offered by the manufacturer; and

(B) The person, company, corporation or other entity submitting such bid is financially capable of performing such warranty or guarantee.

(d)(1) The following transactions shall be subject to approval by the state building commission, in addition to the other approvals required by law:

(A) The acquisition of any interest in real property by the state or any of its departments, institutions or agencies, except for the acquisition of any interest in real property by the department of transportation for highway rights-of-way;

(B) The disposal of any interest in surplus real property described in § 12-2-112; provided, that:

(i) The commission may establish policies that permit the disposal, without approval by the commission, of interests in surplus real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way; and

(ii) Such policies that permit the disposal of any interest, without the approval by the commission, shall not include disposal or conveyance in any manner of any interest or rights in minerals, coal, natural gas, oil, timber and any other energy related resources;

(C) All leases described in § 12-2-115(b); and

(D) All leases or other contracts that may involve the use of private funds for the proposed construction and that relate to improvements to real property in which the state or any of its departments, institutions or agencies have an interest.

(2) Notwithstanding any other law to the contrary, subdivision (d)(1) shall not apply to the University of Tennessee and the state university and community college system of Tennessee in the acquisition and disposal of any interest in real property acquired by gift or devise, unless the acquisition of any interest in real property by gift or devise obligates the University of Tennessee, the state university and community college system of Tennessee, or the state to expend state funds for capital improvements or continuing operating expenditures. Furthermore, information on such gift property will be filed with the commission.

(e)(1) It is the duty of the office of legislative services to notify each member

of the general assembly who requests such notification of any particular project to be considered by the commission, which project is proposed to be located within the district represented by the particular senator or representative.

(2) Such notification shall be given by mail not less than five (5) days prior to the commission meeting at which the subject project will be considered, unless it is an emergency meeting of the commission, in which case notification shall be made to the legislators as quickly as feasible.

(f)(1) The commission may award and approve contracts that provide for retainage as follows: not more than ninety-five percent (95%) of the contract price shall be paid on any contract until it is completed and the work is accepted; provided, that such contracts are with reputable building contractors who are principally located within this state and who have demonstrated by past experience their ability to properly perform equivalent building construction or improvement projects, whether public or private.

(2)(A) Prior to the execution of any such contract in excess of one hundred thousand dollars ($100,000), the commission shall require the execution of a good and solvent corporate surety payment and performance bond in an amount to be determined by the commission.

(B) Such bond shall be sufficient in amount to secure the faithful and satisfactory completion of the state building or improvement project and payment for all labor and materials used by the contractor, or any immediate or remote subcontractor under the contract.

(3) Any damages caused by a building contractor for failure to complete the contract or by failing to satisfactorily complete the work shall be recoverable by the state in an action against the building contractor and the building contractor's sureties.

(g) Full settlement may be made with the contractor after the following have occurred:

(1) The contractor shall furnish evidence to satisfy the commission that all the material used by the contractor, the contractor's subcontractors or the contractor's agents has been fully paid for and all laborers and other employees working for the contractor, the contractor's subcontractors, or the contractor's agents have been fully paid; and

(2) Within ten (10) days after receipt of evidence requested in subdivision (g)(1), the commission shall provide thirty (30) days notice in some newspaper published in the county where the work is done, if there is a newspaper published there, and if not, in a newspaper in an adjoining county, that settlement is about to be made and notifying all claimants to file notice of their claims with the commission, and the period for filing shall not be less than thirty (30) days after the last published notice.

(h) Except as provided in chapter 13, part 1 of this title, this chapter shall have no application to property conveyed in trust to a private corporation organized and chartered under the laws of this state pursuant to § 4-13-101.

(i) Whenever the commissioner of education is authorized by the state board of education to take responsibility for the operation of any local school system or school that has been placed on probation pursuant to title 49, chapter 1, part 6, the state building commission shall have the same authority granted by this

chapter relative to state agencies for all expenditures of educational capital outlay funds for such local school system or school.

History.
Acts 1955, ch. 304, § 2; modified; Acts 1976, ch. 679, §§ 1-3; 1977, ch. 89, § 22; T.C.A., § 4-1502; Acts 1980, ch. 591, § 1; 1980, ch. 741, § 3; 1981, ch. 195, § 1; impl. am. Acts 1981, ch. 264, § 12; Acts 1983, ch. 192, § 1; 1983, ch. 273, §§ 1, 2; 1990, ch. 893, § 8; 1997, ch. 402, §§ 14, 15; 1998, ch. 737, § 1; 2001, ch. 331, §§ 1-3.

Law Reviews.
Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions.
Authority of Tennessee Board of Regents and the University of Memphis to enter into Student Housing Affiliation Agreement with LLC to construct and operate residential facility for use of University students, faculty and staff on property adjacent to campus. OAG 13-91, 2013 Tenn. AG LEXIS 92 (11/20/13).

4-15-103. Expenses of commission members — Administrative personnel — State architect.

(a) The members of the commission shall serve without additional compensation, but shall be entitled to reimbursement for their necessary expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(b) The commission shall have such administrative personnel as are necessary to carry out its purpose and charge, who shall be attached to the department of treasury for administrative purposes. The personnel shall be subject to personnel policies and regulations which are applicable to employees of the department of treasury, such as leave, compensation, classification, and travel requests.

(c) The commission has the authority to employ, terminate, control and establish the compensation of, the state architect. The state treasurer has the authority to employ, terminate, control and set the compensation of, all other personnel of the commission. The state treasurer shall consult with members of the commission prior to taking any personnel action.

History.
Acts 1955, ch. 304, § 3; 1976, ch. 806, § 1(16); T.C.A., § 4-1503; Acts 2017, ch. 87, § 3.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

4-15-104. Rules and regulations for construction.

(a) The commission is authorized to prescribe standards and promulgate rules and regulations for the construction of state buildings, and the procedure to be followed with respect thereto.

(b) The commission is encouraged to prescribe high performance building requirements and other standards, and promulgate rules and regulations, which meet or exceed the 2005 sustainable design guidelines that the commission implemented, that are necessary to ensure all state buildings perform in an energy efficient manner.

(c) Notwithstanding subsection (b), the commission shall not prescribe any high performance building requirement or any other standard, nor promulgate any rules and regulations, which require or permit any wood products

harvested or manufactured in this state, or any wood products designed or manufactured by a forest products company that is headquartered in this state, to be in any way less preferred in the design and construction of state buildings than any wood products harvested or manufactured outside this state, or to be in any way less preferred than any other wood products grown or harvested in this state, that have been certified or graded by any certifying or grading association or agency, including, but not limited to, the Sustainable Forestry Initiative, the American Tree Farm System, or the Forest Stewardship Council.

History.
Acts 1955, ch. 304, § 4; T.C.A., § 4-1504; Acts 2008, ch. 905, § 1; 2013, ch. 363, § 1.

4-15-105. Bidding in large counties — Bidding in East and West Tennessee.

(a) The commission is hereby authorized to permit bids invited by officials, departments, institutions and agencies of the state for building construction or improvements, to be performed or done in counties having a population of six hundred thousand (600,000) or more, according to the federal census of 1960 or any subsequent federal census, to be received and publicly opened in the county at a previously announced place and time by a representative of the state, and that such representative to receive and open the bids may be, but is not limited to, a duly licensed architect or engineer designated by the state.

(b) The commission is authorized to permit bids invited by officials, departments, institutions and agencies of the state for building construction or improvements, to be performed or done in the eastern or western grand division, to be received and publicly opened in such grand division at a previously announced place and time by a representative of the state. Such bids shall be received and opened in the cities of Chattanooga or Knoxville, or the Tri-Cities area for the eastern grand division and in Shelby County or the city of Jackson for the western grand division.

History.
Acts 1969, ch. 285, § 1; T.C.A., § 4-1505; Acts 1982, ch. 770, § 1; 1986, ch. 512, § 1.

Compiler's Notes.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-15-106. Enforcement of other statutes.

(a) It is the duty and responsibility of the commission to enforce the Tennessee Public Buildings Accessibility Act, compiled in title 68, chapter 120, part 2, as to all public buildings owned or leased by the state or any department, institution or agency thereof, and any subsequent acts that require specific construction or design specifications, techniques or objectives for such state public buildings.

(b)(1) It is also the duty and responsibility of the commission to enforce the code for energy conservation in new building construction, compiled in title 13, chapter 19, as to all buildings designed or constructed for the state of

Tennessee after January 1, 1979. Such enforcement shall be accomplished by requiring the designing architect or engineer and the construction contractor to certify that the design and construction of the building for which each is responsible is in conformity with the requirements of title 13, chapter 19. The staff of the commission shall review such design or construction to verify compliance. Responsibility for proper design of the structure shall remain with the designing architect or engineer, even though the staff of the commission has conducted the review and approval process of the project documents.

(2) In addition to the requirements for new buildings to meet the code for energy conservation, as compiled in title 13, chapter 19, the staff of the commission shall review any recommended energy conservation proposals and make recommendations to the commission for inclusion of these proposals in projects where deemed feasible.

(c) The state architect or the state architect's designee shall allocate the energy efficient commercial building tax deduction codified in 26 U.S.C. § 179D to the party primarily responsible for designing the property in accordance with internal revenue service tax provisions. This party shall distribute all or part of this deduction to other parties responsible for design or installation of energy efficient commercial systems used to obtain such tax credit. This authority is retroactive, pursuant to applicable internal revenue service tax guidelines. If the property is financed with bonds issued by the state, no energy efficient commercial building tax deduction shall be awarded without approval of bond counsel.

History. Acts 1978, ch. 905, § 1; 1979, ch. 403, § 2; T.C.A., § 4-1506; Acts 1991, ch. 498, § 7; 2012, ch. 1083, § 1.

4-15-107. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the state building commission;

(2) "Improvement to real property" means:

(A) The construction or erection of new buildings or structures in which the state of Tennessee or any of its departments, institutions or agencies have an interest, whether financed by public or private funds or both;

(B) The major maintenance of any building or structure in which the state of Tennessee or any of its departments, institutions or agencies have an interest; or

(C) The renovation of any building or structure in which the state of Tennessee or any of its departments, institutions or agencies have an interest;

(3) "Major maintenance" means the repair or renovation of any building or structure or any portion thereof in which the state of Tennessee or any of its departments, institutions or agencies have an interest and that is being funded by direct appropriations for major maintenance or that will cost in excess of one hundred thousand dollars ($100,000); and

(4) "Renovation" means the change in the functional use or operation of space in existing buildings or structures in which the state of Tennessee or any of its departments, institutions or agencies have an interest.

History.
Acts 1980, ch. 741, § 1; 1986, ch. 631, § 1.

Attorney General Opinions.
Authority of Tennessee Board of Regents and the University of Memphis to enter into Student Housing Affiliation Agreement with LLC to construct and operate residential facility for use of University students, faculty and staff on property adjacent to campus. OAG 13-91, 2013 Tenn. AG LEXIS 92 (11/20/13).

CHAPTER 16

[REPEALED]

Section
4-16-101, 4-16-102. [Repealed.]

4-16-101, 4-16-102. [Repealed.]

History.
Acts 1963, ch. 205, § 1; T.C.A., § 4-1601; Acts 1980, ch. 675, § 2; 2013, ch. 21, §§ 1, 3; 2019, ch. 100, § 1; repealed by Acts 2021, ch. 194, § 7, effective April 22, 2021.

Compiler's Notes.
Former chapter 16 §§ 4-16-101 – 4-16-102 concerned office of local government.

CHAPTER 17

PROPERTY TAX INCENTIVES FOR ECONOMIC DEVELOPMENT

Section
4-17-101. Legislative findings and intent.
4-17-102. Economic development agreement defined.
4-17-103. Agreements — Writing — Submission — Approval — Late filing payment in lieu of tax.
4-17-104. Petitions to boards for adjudication of issues.
4-17-105. Applicability.

4-17-101. Legislative findings and intent.

The general assembly finds and declares that property tax incentives, resulting from legal ownership of valuable business or commercial properties by local governments or their agencies under various statutory programs, has served to promote economic development, but confusion and nonuniformity in structuring such incentives have led to uncertainty in determining property tax liability of new investment prospects. It is the intent of this chapter to provide for state and local review of property tax incentives for economic development. It is not the intent of this chapter to authorize new property tax incentives beyond those authorized by law on January 1, 1993.

History.
Acts 1992, ch. 1000, § 1; T.C.A. § 4-17-301.

Code Commission Notes. Part 3, §§ 4-17-301 — 4-17-305 was renumbered as chapter 17, §§ 4-17-101 — 4-17-105 by authority of the Code Commission in 2021.

Compiler's Notes.
Former chapter 17, §§ 4-17-101 — 4-17-112 (Acts 1986, ch. 867, §§ 2-15; 1987, ch. 144, §§ 1-11), concerning the economic development corporation, was repealed by Acts 1989, ch. 212, § 10, effective April 27, 1989, and has been designated part 1 in view of the addition of part 2 of this chapter in 1989.

Former part 2, § 4-17-201 — 4-17-208 (Acts 1989, ch. 212, §§ 1-7, 9; 1995, ch. 447, § 1), concerning legislative findings, was repealed by Acts 2000, ch. 559, § 2, effective July 1, 2000. Acts 2000, ch. 559, § 3, provided that notwithstanding the provisions of § 4-29-112, or any other law to the contrary, the Tennessee growth

fund, created by repealed § 4-17-203, terminated and ceased all activities on July 1, 2000.

Former part 4, §§ 4-17-401 — 4-17-415 (Acts 1995, ch. 443, §§ 1–15; repealed by Acts 2013, ch. 198, § 2, effective April 23, 2013), concerned the Tennessee Industrial Finance Corporation Act.

4-17-102. Economic development agreement defined.

As used in this chapter, unless the context otherwise requires:

(1) "Economic development agreement" means an agreement between a private entity and local government agency that permits use of specified property of the local government or its agencies for business or commercial purposes of the private entity, in order to promote local economic development, and that has the effect of reducing property taxes on such property below amounts that would be due if the property were owned by the private entity; and

(2) "Economic development agreement" includes, but is not limited to, leases or other agreements with private entities under the industrial development program provided in title 7, chapter 53, and redevelopment plans and agreements containing tax increment financing provisions authorized under title 13, chapter 20, including development authorities created by private act, as authorized pursuant to § 13-20-202(c).

History.

Acts 1992, ch. 1000, § 2; 2005, ch. 352, § 1; T.C.A. § 4-17-302.

Code Commission Notes. Part 3, §§ 4-17-301 — 4-17-305 was renumbered as chapter 17, §§ 4-17-101 — 4-17-105 by authority of the Code Commission in 2021.

Compiler's Notes.

Former chapter 17, §§ 4-17-101 — 4-17-112 (Acts 1986, ch. 867, §§ 2-15; 1987, ch. 144, §§ 1-11), concerning the economic development corporation, was repealed by Acts 1989, ch. 212, § 10, effective April 27, 1989, and has been designated part 1 in view of the addition of part 2 of this chapter in 1989.

Former part 2, § 4-17-201 — 4-17-208 (Acts 1989, ch. 212, §§ 1-7, 9; 1995, ch. 447, § 1), concerning legislative findings, was repealed by Acts 2000, ch. 559, § 2, effective July 1, 2000. Acts 2000, ch. 559, § 3, provided that notwithstanding the provisions of § 4-29-112, or any other law to the contrary, the Tennessee growth fund, created by repealed § 4-17-203, terminated and ceased all activities on July 1, 2000.

Former part 4, §§ 4-17-401 — 4-17-415 (Acts 1995, ch. 443, §§ 1–15; repealed by Acts 2013, ch. 198, § 2, effective April 23, 2013), concerned the Tennessee Industrial Finance Corporation Act.

4-17-103. Agreements — Writing — Submission — Approval — Late filing payment in lieu of tax.

All economic development agreements shall be reduced to writing and submitted to the chief executive officer of each jurisdiction in which the property is located and to the comptroller of the treasury, for review, but not approval. The agreement may be submitted in advance of its execution but must be submitted within ten (10) days after its execution. The name of private business entities that are parties to the agreement may be obscured on copies of agreements submitted in advance of their execution. If the agreement is not filed within thirty (30) days after written demand by the comptroller of the treasury or other public entity with which it is to be filed, the private entity that is party to the agreement shall owe an additional payment in lieu of tax in the amount of five hundred dollars ($500).

History.
Acts 1992, ch. 1000, § 3; 2008, ch. 1013, § 1; T.C.A. § 4-17-303.

Code Commission Notes. Part 3, §§ 4-17-301 — 4-17-305 was renumbered as chapter 17, §§ 4-17-101 — 4-17-105 by authority of the Code Commission in 2021.

Compiler's Notes.
Former chapter 17, §§ 4-17-101 — 4-17-112 (Acts 1986, ch. 867, §§ 2-15; 1987, ch. 144, §§ 1-11), concerning the economic development corporation, was repealed by Acts 1989, ch. 212, § 10, effective April 27, 1989, and has been designated part 1 in view of the addition of part 2 of this chapter in 1989.

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Former part 4, §§ 4-17-401 — 4-17-415 (Acts 1995, ch. 443, §§ 1–15; repealed by Acts 2013, ch. 198, § 2, effective April 23, 2013), concerned the Tennessee Industrial Finance Corporation Act.

4-17-104. Petitions to boards for adjudication of issues.

For purposes of establishing the taxable value, classification, or exempt status of property subject to an economic development agreement, the parties may petition the local and state boards of equalization for adjudication of such issues in the manner otherwise required by law for filing appeals from local assessments.

History.
Acts 1992, ch. 1000, § 4; T.C.A. § 4-17-304.

Code Commission Notes. Part 3, §§ 4-17-301 — 4-17-305 was renumbered as chapter 17, §§ 4-17-101 — 4-17-105 by authority of the Code Commission in 2021.

Compiler's Notes.
Former chapter 17, §§ 4-17-101 — 4-17-112 (Acts 1986, ch. 867, §§ 2-15; 1987, ch. 144, §§ 1-11), concerning the economic development corporation, was repealed by Acts 1989, ch. 212, § 10, effective April 27, 1989, and has been designated part 1 in view of the addition of part 2 of this chapter in 1989.

Former part 2, § 4-17-201 — 4-17-208 (Acts 1989, ch. 212, §§ 1-7, 9; 1995, ch. 447, § 1), concerning legislative findings, was repealed by Acts 2000, ch. 559, § 2, effective July 1, 2000. Acts 2000, ch. 559, § 3, provided that notwithstanding the provisions of § 4-29-112, or any other law to the contrary, the Tennessee growth fund, created by repealed § 4-17-203, terminated and ceased all activities on July 1, 2000.

Former part 4, §§ 4-17-401 — 4-17-415 (Acts 1995, ch. 443, §§ 1–15; repealed by Acts 2013, ch. 198, § 2, effective April 23, 2013), concerned the Tennessee Industrial Finance Corporation Act.

4-17-105. Applicability.

This chapter shall not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before January 1, 1993, except that the parties to any existing economic development agreements otherwise required to be disclosed under this chapter shall disclose the existence and terms of such agreements to the comptroller of the treasury on or before January 1, 1993.

History.
Acts 1992, ch. 1000, § 5; T.C.A. § 4-17-305.

Code Commission Notes. Part 3, §§ 4-17-301 — 4-17-305 was renumbered as chapter 17, §§ 4-17-101 — 4-17-105 by authority of the Code Commission in 2021.

Compiler's Notes.
Former chapter 17, §§ 4-17-101 — 4-17-112 (Acts 1986, ch. 867, §§ 2-15; 1987, ch. 144, §§ 1-11), concerning the economic development corporation, was repealed by Acts 1989, ch. 212, § 10, effective April 27, 1989, and has been designated part 1 in view of the addition of part 2 of this chapter in 1989.

Former part 2, § 4-17-201 — 4-17-208 (Acts 1989, ch. 212, §§ 1-7, 9; 1995, ch. 447, § 1), concerning legislative findings, was repealed by

Acts 2000, ch. 559, § 2, effective July 1, 2000. Acts 2000, ch. 559, § 3, provided that notwithstanding the provisions of § 4-29-112, or any other law to the contrary, the Tennessee growth fund, created by repealed § 4-17-203, terminated and ceased all activities on July 1, 2000.

Former part 4, §§ 4-17-401 — 4-17-415 (Acts 1995, ch. 443, §§ 1–15; repealed by Acts 2013, ch. 198, § 2, effective April 23, 2013), concerned the Tennessee Industrial Finance Corporation Act.

CHAPTER 18

FALSE CLAIMS ACT

Section
4-18-101. Short title.
4-18-102. Chapter definitions.
4-18-103. Liability for violations.
4-18-104. Investigation and prosecution.
4-18-105. Prohibition against preventing employees from disclosing information — Violations — Remedies.
4-18-106. Statute of limitations.
4-18-107. Provisions are not exclusive — Severability — Liberal construction.
4-18-108. Inapplicable to medical claims.

4-18-101. Short title.

This chapter shall be known and may be cited as the "False Claims Act."

History.
Acts 2001, ch. 367, § 1.

Cross-References.
Insurance fraud, title 56, ch. 53.

Law Reviews.
Putting an End to False Claims Act Hush Money: An Agency-Approval Approach to Qui Tam Prefiling Releases, 68 Vand. L. Rev. 1163 (2015).

4-18-102. Chapter definitions.

For purposes of this chapter:

(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state, referred to in this chapter as "state funds" or by any political subdivision thereof, referred to in this chapter as "political subdivision funds";

(2)(A) "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information;

(B) Proof of specific intent to defraud is not required;

(3) "Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust;

(4) "Political subdivision" means any city, town, municipality, county,

including any county having a metropolitan form of government, or other legally authorized local governmental entity with jurisdictional boundaries; and

(5) "Prosecuting authority" means the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

History.
Acts 2001, ch. 367, § 2.

NOTES TO DECISIONS

1. Defintion of False.
Although the statute does not specifically define the word false, the court finds it appropriate to give the word its natural meaning as something that is untrue or not genuine, and the court finds support for this meaning in other Tennessee False Claims Act provisions; the juxtaposition of the terms truth and falsity demonstrate that false should be defined as the opposite of true. Cotham v. Yeager, 607 S.W.3d 820, 2020 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 24, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 443 (Tenn. July 17, 2020).

4-18-103. Liability for violations.

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three (3) times the amount of damages that the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than two thousand five hundred dollars ($2,500) and not more than ten thousand dollars ($10,000) for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision;

(3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision;

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit

money or property to the state or to any political subdivision;

(8) Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim; or

(9) Knowingly makes, uses, or causes to be made or used any false or fraudulent conduct, representation, or practice in order to procure anything of value directly or indirectly from the state or any political subdivision.

(b) Notwithstanding subsection (a), the court may assess not less than two (2) times nor more than three (3) times the amount of damages that the state or the political subdivision sustains because of the act of the person described in that subsection, and no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to that person about the violation within thirty (30) days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the state or a political subdivision of the violation; and

(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars ($500) in value, unless the controversy arose from a violation of chapter 58 of this title. For purposes of this subsection (d), "controversy" means any one (1) or more false claims submitted by the same person in violation of this chapter.

(e) This section does not apply to claims, records, or statements made pursuant to workers' compensation claims.

(f) This section does not apply to claims, records, or statements made under any statute applicable to any tax administered by the department of revenue.

History.

Acts 2001, ch. 367, § 3; 2003, ch. 418, § 4; 2012, ch. 1061, § 2.

Compiler's Notes.

Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which amended subsection (d). All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which amended subsection (d), shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

NOTES TO DECISIONS

1. No Violation.

Only falsity alleged was that a contract was violative of the Purchasing Act's provisions and therefore unlawful, but as the Purchasing Act was not applicable, none of the claims of Tennessee False Claims Act violations could stand.

Cotham v. Yeager, 607 S.W.3d 820, 2020 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 24, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 443 (Tenn. July 17, 2020).

Because there was no request or demand for money, property, or services made by any defendant to the county seeking payment from county funds, violations under T.C.A. § 4-18-103(a)(1)-(3) could not be proven in this matter. Cotham v. Yeager, 607 S.W.3d 820, 2020 Tenn. App. LEXIS 26 (Tenn. Ct. App. Jan. 24, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 443 (Tenn. July 17, 2020).

4-18-104. Investigation and prosecution.

(a)(1) The attorney general and reporter shall diligently investigate violations under § 4-18-103 involving state funds. If the attorney general and reporter finds that a person has violated or is violating § 4-18-103, the attorney general and reporter may bring a civil action under this section against that person.

(2) If the attorney general and reporter brings a civil action under this subsection (a) on a claim involving political subdivision funds as well as state funds, the attorney general and reporter shall, on the same date that the complaint is filed in this action, serve by mail with return receipt requested a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the attorney general and reporter under this subsection (a) within sixty (60) days after receipt of the complaint pursuant to subdivision (a)(2). The court may permit intervention thereafter.

(b)(1) The prosecuting authority of a political subdivision shall diligently investigate violations under § 4-18-103 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating § 4-18-103, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the attorney general and reporter.

(3) Within sixty (60) days after receiving the complaint pursuant to subdivision (b)(2), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the attorney general and reporter shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party; or

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c)(1) A person may bring a civil action for a violation of this chapter for the person and either for the state in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are involved, or for both the state and political subdivision if state and political subdivision funds are involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public

purposes behind this chapter.

(2) A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed. This subsection (c) shall not be construed as prohibiting an action being brought in federal court that involves claims from several states or claims involving federal funds.

(3) On the same day as the complaint is filed pursuant to subdivision (c)(2), the qui tam plaintiff shall serve by mail with return receipt requested the attorney general and reporter with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the attorney general and reporter may elect to intervene and proceed with the action.

(5) The attorney general and reporter may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(5), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted; or

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)(A) Within fifteen (15) days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the forty-five-day period or any extensions obtained under subdivision (c)(7)(C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the

seal shall be lifted; or

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)(A) Within fifteen (15) days after receiving a complaint alleging violations that involve both state and political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the attorney general and reporter or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The attorney general and reporter or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(8)(C), the attorney general and reporter shall do one of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted;

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority; or

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the attorney general and reporter proceeds with the action pursuant to subdivision (c)(8)(D)(i) the prosecuting authority of the political subdivision shall be permitted to intervene in the action within sixty (60) days after the attorney general and reporter notifies the court of its intentions. The court may authorize intervention thereafter.

(9) The defendant shall not be required to respond to any complaint filed under this section until thirty (30) days after the complaint is unsealed and served upon the defendant.

(10) When a person brings an action under this subsection (c), no other person may bring a related action based on the facts underlying the pending action.

(d)(1) No court shall have jurisdiction over an action brought under subsection (c) against a member of the general assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body or other elected official of any political subdivision if the action is based on evidence or information known to the state or political

subdivision when the action was brought.

(2) A person may not bring an action under subsection (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the state or political subdivision is already a party.

(3)(A) No court shall have jurisdiction over an action under this chapter based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the general assembly, comptroller of the treasury, or governing body of a political subdivision, or by the news media, unless the action is brought by the attorney general and reporter or the prosecuting authority of a political subdivision or the person bringing the action is an original source of the information.

(B) For purposes of subdivision (d)(3)(A), "original source" means an individual, who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subdivision (d)(3)(A).

(4) No court shall have jurisdiction over an action brought under subsection (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of such person's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e)(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)(1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under subdivision (f)(2)(A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)(1)(A) If the attorney general and reporter initiates an action pursuant to subsection (a) or assumes control of an action initiated by a prosecuting authority pursuant to subdivision (b)(3)(A), the office of the attorney general and reporter shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subsection (b), the office of the prosecuting authority shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the attorney general and reporter pursuant to subdivision (a)(3) or remains a party to an action assumed by the attorney general and reporter pursuant to subdivision (b)(3)(A), the court may award the office of the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery under subdivision (g)(1)(A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive at least twenty-five percent (25%) but not more than thirty-three percent (33%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the attorney general and reporter's office or the office of the prosecuting authority of the political subdivision shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the attorney general and reporter and a prosecuting authority are involved in a qui tam action pursuant to subdivision (c)(6)(C), the court at its discretion may award the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive an amount that the court decides is reasonable for collecting

the civil penalty and damages on behalf of the government. The amount shall be not less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under subdivision (d)(4), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to subdivisions (g)(1)-(5), inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in § 4-18-103.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subsection (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h)(1) The court may stay an act of discovery of the person initiating the action for a period of not more than sixty (60) days if the attorney general and reporter or local prosecuting authority shows that the act of discovery would interfere with an investigation or a prosecution of criminal or civil matter arising out of the same facts, regardless of whether the attorney general and reporter or local prosecuting authority proceeds with the action. This showing shall be conducted in camera.

(2) The court may extend the sixty-day period upon a further showing in camera that the attorney general and reporter or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the attorney general and reporter or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general and reporter's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1) Limiting the number of witnesses the person may call;

(2) Limiting the length of the testimony of the witnesses;

(3) Limiting the person's cross-examination of witnesses; or

(4) Otherwise limiting the participation by the person in the litigation.

(j) There is hereby created in the state treasury a fund to be known as the "False Claims Act Fund." Proceeds from the action or settlement of the claim by the attorney general and reporter pursuant to this chapter shall be deposited into this fund. Moneys in this fund, upon appropriation by the general assembly, shall be used by the attorney general and reporter to support the ongoing investigation and prosecution of false claims in furtherance of this chapter. Amounts in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in this chapter.

History.
Acts 2001, ch. 367, § 4; 2004, ch. 763, § 1.

4-18-105. Prohibition against preventing employees from disclosing information — Violations — Remedies.

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under § 4-18-104.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action,

including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under § 4-18-104.

(c) An employer who violates subsection (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate chancery court of the state for the relief provided in this subsection (c).

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in terms and conditions of employment by such person's employer because of participation in conduct that directly or indirectly resulted in the submission of a false claim to the state or a political subdivision shall be entitled to the remedies under subsection (c) if, and only if, both of the following occur:

(1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

History.
Acts 2001, ch. 367, § 5.

Cross-References.
Discharge for refusal to participate in or remain silent about illegal activities, § 50-1-304.

4-18-106. Statute of limitations.

(a) A civil action under § 4-18-104 may not be filed more than three (3) years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than ten (10) years after the date on which the violation of § 4-18-103 was committed.

(b) A civil action under § 4-18-104 may be brought for activity prior to July 1, 2001, if the limitations period set in subsection (a) has not lapsed.

(c) In any action brought under § 4-18-104, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other law to the contrary, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to July 1, 2001, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under § 4-18-104(a), (b), or (c).

History.
Acts 2001, ch. 367, § 6.

NOTES TO DECISIONS

1. Retroactivity.
Retroactivity provisions in this statute did not violate the Ex Post Facto Clause of the U.S. Constitution. United States Ex Rel. Bergman v. Abbot Labs., 2014 U.S. Dist. LEXIS 12333 (E.D. Pa. Jan. 29, 2014).

4-18-107. Provisions are not exclusive — Severability — Liberal construction.

(a) This chapter is not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for by law or available under common law.

(b) If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end this chapter is declared to be severable.

(c) This chapter is declared to be remedial in nature and this chapter shall be liberally construed to effectuate its purposes.

History.
Acts 2001, ch. 367, § 7.

4-18-108. Inapplicable to medical claims.

This chapter shall not apply to any conduct, activity or claims covered by the Medicaid False Claims Act, §§ 71-5-181 — 71-5-185, including without limitation, claims arising out of funds paid to or by TennCare managed care organizations.

History.
Acts 2001, ch. 367, § 8.

CHAPTER 19

STATE EXAMINING BOARDS — GENERAL PROVISIONS

Section
4-19-101. Retention of examination papers.
4-19-102. Applicants — Number of times examination may be taken.
4-19-103. Accommodations for person taking examination for licensure.

4-19-101. Retention of examination papers.

All state boards, except the board of law examiners, charged with the duty of giving examinations to determine the qualifications of individuals who seek to be licensed to engage in a special profession, position or business, are required to retain all examination papers for a period of at least one (1) year, during which time the examination papers will be subject to review upon request.

History.
Acts 1965, ch. 349, § 1; T.C.A., § 4-1901.

Cross-References.
Professional licensing and examining boards, titles 62, 63.

4-19-102. Applicants — Number of times examination may be taken.

(a) No board, commission or agency of this state that issues licenses to persons to engage in an occupation, trade or profession based upon written or oral examination shall adopt or enforce any rule, regulation or law limiting the number of times that any person, otherwise qualified, may apply for and stand for such written or oral examination at any regular examination session regardless of the number of times such person has taken such examination.

(b) This section shall specifically apply to the state board of law examiners.

History.
Acts 1971, ch. 354, § 1; 1972, ch. 789, § 1; T.C.A., § 4-1902.

4-19-103. Accommodations for person taking examination for licensure.

(a) As used in this section:

(1) "Agency" has the same meaning as defined in § 4-5-102; and

(2) "License" has the same meaning as defined in § 4-5-102.

(b) An agency that requires a person applying for a license to engage in an occupation, trade, or profession in this state to take an examination shall ensure the provision of appropriate accommodations in accordance with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.).

(c) A state agency that administers a required examination for licensure shall promulgate rules to implement this section. The rules must:

(1) Establish the eligibility criteria that a person must meet for an accommodation to be provided pursuant to this section; and

(2) Be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(d) The requirements of this section do not apply to an examination mandated and administered pursuant to federal law.

History.
Acts 2019, ch. 243, § 1.

CHAPTER 20

ART

Part 1. Arts Commission

Section
4-20-101. Commission created — Regional representation.
4-20-102. Members — Tenure — Vacancies — Expenses — Officers.
4-20-103. Executive director — Staff — Advisory panels.
4-20-104. Duties and objectives.
4-20-105. Powers.

Section
4-20-106. Federal funds.
4-20-107. Duties as to underserved and underrepresented artists and art organizations.

Part 2. Stieglitz Collection

4-20-201. Fisk University Stieglitz Collection Art Endowment Fund.
4-20-202. Appropriation to further artistic and cultural purposes.

Part 3. Douglas Henry State Museum Commission

4-20-301. Creation — Members.
4-20-302. Qualifications of members — Chair — Service of members without compensation — Expenses.
4-20-303. Transfer of duties and functions from the Tennessee arts commission — Function of the commission.
4-20-304. Powers and authority — Assistance and data from other state entities — Sole governing authority of museum.
4-20-305. Commission official agency to receive federal funding.

PART 1

ARTS COMMISSION

4-20-101. Commission created — Regional representation.

(a)(1) There is created and established a state commission to be known as the Tennessee arts commission, to consist of fifteen (15) members broadly representative of all fields of the performing, visual and literary arts, to be appointed by the governor from among citizens of the state who have demonstrated a vital interest in the performing, visual or literary arts.

(2) In making appointments to the arts commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(b) There shall be at least one (1) but not more than two (2) members from each United States congressional district in Tennessee. Such members' residency shall be determined by the congressional district in which such members are registered to vote.

History.
Acts 1967, ch. 2, § 1; 1978, ch. 688, § 1; T.C.A., § 4-2001; Acts 1980, ch. 680, § 1; 1988, ch. 1013, § 6.

Compiler's Notes.
The Tennessee arts commission, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

Cross-References.
Allocation of funds from cultural motor vehicle plates to arts commission, § 55-4-215.

4-20-102. Members — Tenure — Vacancies — Expenses — Officers.

(a) Terms shall be for five (5) years.

(b) No member of the commission who serves a full five-year term shall be eligible for reappointment during a one-year period following the expiration of such member's term.

(c) All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments.

(d)(1) The members of the commission shall not receive any compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties as members of the commission.

(2) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The commission will annually elect its chair and other officers.

History.
Acts 1967, ch. 2, § 2; 1976, ch. 806, § 1(9); T.C.A., § 4-2002.

4-20-103. Executive director — Staff — Advisory panels.

(a) The governor shall appoint an executive director for the Tennessee arts commission. The executive director shall have broad experience in art agency management. Prior to appointing the executive director, the governor shall request that the Tennessee arts commission conduct a search for qualified candidates. The commission shall submit to the governor at least three (3) interested and qualified candidates. The commission shall submit additional candidates at the governor's request. The governor shall appoint the executive director from among the recommendations submitted by the commission. In the event of a vacancy, the governor shall appoint a new executive director. The governor or the commission shall remove the executive director for neglect of duty or other just cause.

(b) The executive director shall employ other officers, experts and employees as may be needed and shall fix their compensation within the amounts made available for such purposes. Employment of staff members is subject to the approval of the commissioner of human resources.

(c) The commission may also, at its discretion, form advisory panels from qualified persons within the state to obtain their advice and counsel on matters pertaining to the arts. Members of these panels shall serve at the will and pleasure of the commission and will receive no compensation.

History.
Acts 1967, ch. 2, § 3; T.C.A., § 4-2003; Acts 2007, ch. 60, § 3; 2012, ch. 986, § 19.

Compiler's Notes.
Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

4-20-104. Duties and objectives.

The duties and objectives of the commission are to:

(1) Stimulate and encourage throughout the state the study and presentation of the performing, visual and literary arts and public interest and

participation therein;

(2) Encourage participation in, appreciation of, and education in the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) Take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state, to expand the state's cultural resources and to promote the use of art in the state government's activities and facilities; and

(4) Encourage excellence and assist freedom of artistic expression essential for the well-being of the arts.

History.
Acts 1967, ch. 2, § 4; T.C.A., § 4-2004.

4-20-105. Powers.

(a) The commission is authorized and empowered to:

(1) Hold public hearings;

(2) Enter into contracts, within the limit of funds available therefor, with individuals, organizations and institutions for services furthering the objectives of the commission's programs;

(3) Enter into contracts, within the limit of funds available therefor, with local and regional associations for cooperative endeavors furthering the objectives of the commission's programs;

(4) Accept gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the objectives of the commission's programs;

(5) Make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of this part; and

(6) Promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(b) The commission may request and shall receive from any department, division, board, bureau, commission or agency of this state such assistance and data as will enable it properly to carry out its powers and duties under this part.

History.
Acts 1967, ch. 2, § 5; T.C.A., § 4-2005; Acts 1986, ch. 708, § 3.

Cross-References.
State museum, supervision and administration, § 4-12-101.

4-20-106. Federal funds.

The commission is the official agency of the state to receive and disburse appropriate funds made available by the federal government for programs related to the performing, visual and literary arts, and the preservation of architecture, art or artifacts.

History.
Acts 1967, ch. 2, § 6; T.C.A., § 4-2006.

4-20-107. Duties as to underserved and underrepresented artists and art organizations.

The executive director shall employ at least one (1) full-time employee who shall perform the following duties:

(1) Identify the traditionally underserved and underrepresented ethnic minority, people with a disability, elderly, and rural artists and arts organizations within the state;

(2) Periodically survey such artists and arts organizations in order to determine the level of grant program participation among such artists and organizations;

(3) Review with the executive director and the members of the Tennessee arts commission the grant process and award system in order to identify barriers to equal opportunity for such artists and arts organizations with regard to recruitment, selection, training, technical assistance, funding, benefits and special conditions for each arts grant program administered by or through any entity of state government;

(4) Report, at least once each year, to the arts commission and to the members of the general assembly concerning the level of grant program participation by such artists and arts organizations and make recommendations pertaining thereto; and

(5) Undertake other appropriate activities to assure equitable participation by the traditionally underserved and underrepresented ethnic minority, people with a disability, elderly, and rural artists and arts organizations within this state with regard to grant programs administered by or through entities of state government.

History.
Acts 1988, ch. 866, § 1; 2011, ch. 47, § 3.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

PART 2

STIEGLITZ COLLECTION

4-20-201. Fisk University Stieglitz Collection Art Endowment Fund.

(a) The Fisk University Stieglitz Collection Art Endowment Fund is hereby created under the supervision of the Tennessee arts commission.

(b) Such fund shall operate as an irrevocable trust fund within the state treasury and shall be administered by the state treasurer. The terms of the trust instrument shall be approved by the attorney general and reporter.

(c) The trustees of the trust fund shall be the board of trustees of Fisk University. The members of the Tennessee arts commission shall serve in an ex

officio capacity as an advisory committee to such trustees. The state treasurer shall serve as chair of the advisory committee.

(d) The trustees shall set the investment policy for the trust in accordance with the laws, guidelines and policies that govern investments by the Tennessee consolidated retirement system. The state treasurer is responsible for investment of trust funds in accordance with the policy established by the trustees.

(e) The trust shall include funds appropriated for the purpose of funding the trust, individual contributions, corporate contributions, contributions by any other public or private entity and the earnings thereon.

(f)(1) The corpus of the trust shall not be expended for any purpose.

(2) Income from the trust shall only be expended to employ a curator, security staff and other employees necessary to allow the Stieglitz Collection at Fisk University to be open to the public, to enable other art exhibits at Fisk University to be open to the public, to employ a docent to prepare educational materials and tours, to provide public information concerning the availability of the artistic and cultural resources at Fisk University, and to provide other necessary staff or services to implement the preceding purposes. No funds may be expended for such purposes until the requirements of subsection (g) have been fulfilled.

(g) In consideration of the funds made available to Fisk University pursuant to this part, the university shall execute an agreement with the state to admit, for education purposes and free of admission or any other fees, any junior or senior high school student enrolled in any public school who is accompanied by a teacher to the Stieglitz Collection or any other art exhibit that receives funds pursuant to this part that is otherwise open to the public.

(h) All moneys in the trust fund may be commingled for investment with other trust funds and other funds subject to investment by the state treasurer.

History.
Acts 1987, ch. 398, § 1.

4-20-202. Appropriation to further artistic and cultural purposes.

There is appropriated an additional sum of eighty thousand dollars ($80,000) annually to the Tennessee arts commission for the purpose of making an annual grant of that amount to Fisk University to employ a curator, security staff and other employees necessary to allow the Stieglitz Collection at Fisk University to be open to the public, to enable other art exhibits at Fisk University to be open to the public, to employ a docent to prepare educational materials and tours, to provide public information concerning the availability of the artistic and cultural resources at Fisk University, and to provide other necessary staff or services to implement the preceding purposes. The appropriation in this section is to become effective only if adopted as an amendment to the general appropriations act.

History.
Acts 1987, ch. 398, § 2.

PART 3

DOUGLAS HENRY STATE MUSEUM COMMISSION

4-20-301. Creation — Members.

(a) There is created and established a state commission to be known as the Douglas Henry state museum commission, referred to as "the commission" in this part, to consist of thirteen (13) voting members.

(b)(1) Two (2) members of the commission shall be appointed by the speaker of the house of representatives. These members shall serve four-year terms.

(2) Two (2) members of the commission shall be appointed by the speaker of the senate. These members shall serve four-year terms.

(c) Six (6) members of the commission shall be appointed by the governor, with two (2) members to be appointed from each grand division of the state. These members shall serve three-year terms and shall not serve for more than two (2) consecutive terms. The successor of any of these members shall be appointed from their grand division.

(d) One (1) member of the commission shall be appointed jointly by the speaker of the senate and the speaker of the house of representatives as an at-large member. This member shall serve a three-year term and shall not serve more than two (2) consecutive terms.

(e) One (1) member of the commission shall be the chair of the senate finance, ways and means committee or the chair's designee. One (1) member of the commission shall be the chair of the house of representatives finance, ways and means committee or the chair's designee.

(f) The commission shall include, as an ex officio, nonvoting member, the museum executive director, whose term shall be for so long as the person remains the museum executive director.

(g) The commission shall include, as an ex officio, nonvoting member, the chair of the Tennessee arts commission as of January 1, 2009, who shall serve only one (1) two-year term beginning on July 1, 2009. This member shall serve as a resource to the state museum commission. Notwithstanding § 55-4-301 or § 55-4-216 or any other law to the contrary, this member shall facilitate transition grants awarded from revenue granted from the sale of new specialty earmarked and cultural plates to the state museum commission from the arts commission, with the grant money to be used at the discretion of the museum commission for operating expenses. The commission shall be eligible to receive these transition grants pursuant to the authority granted to the member in this subsection (g) for the period beginning July 1, 2009, and ending June 30, 2011. Nothing in this subsection (g) shall prohibit the commission from receiving transition grants pursuant to any other authority.

(h) The commission shall include as an ex officio, nonvoting member, the president of the Tennessee historical society or the president's designee, whose term shall begin on July 1, 2015.

(i) In making appointments to the state museum commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(j) A commission member shall continue to serve until a successor is appointed by the appropriate appointing authority. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments.

(k) A quorum shall be six (6) voting members of the commission.

History.
Acts 2009, ch. 497, § 1; 2010, ch. 1135, §§ 3, 4; 2013, ch. 478, § 1; 2014, ch. 719, § 1; 2018, ch. 821, §§ 16, 19; 2018, ch. 1023, § 53.

Compiler's Notes.
The Douglas Henry state museum commission, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-20-302. Qualifications of members — Chair — Service of members without compensation — Expenses.

(a) The members of the commission shall be citizens of the state who have demonstrated active involvement in museums, museum governance, history, art, cultural heritage and enrichment, education and who exemplify fundamental leadership skills and fundraising capabilities.

(b) The commission shall elect a chair from among its appointed membership. The chair shall serve in that capacity for one (1) year and shall be eligible for reelection. The chair shall preside at all meetings and shall have all the powers and privileges of the other members.

(c)(1) The members of the commission shall not receive any compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties as members of the commission.

(2) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 2009, ch. 497, § 1.

4-20-303. Transfer of duties and functions from the Tennessee arts commission — Function of the commission.

(a) The duties and functions of the Tennessee arts commission relative to the operation of the state museum are transferred to the Douglas Henry state museum commission.

(b) The primary function of the commission shall be to oversee the operations of the state museum. The commission shall also be entrusted with establishing the strategic direction of the museum, with an emphasis on the educational and cultural enrichment of the citizens of this state. The commission shall work to ensure that the citizens of this state have access and exposure to the museum collections and special changing exhibits, and that the current collections are preserved appropriately and exposed to the public. The commission shall also work to ensure that future acquisitions are made in a deliberate manner in support of the mission and goals of the museum, for the purpose of educating the citizens of this state.

History.
Acts 2009, ch. 497, §§ 1, 7.

4-20-304. Powers and authority — Assistance and data from other state entities — Sole governing authority of museum.

(a) The commission is authorized and empowered to:

(1) Oversee the operation of the state museum;

(2) Employ a museum executive director;

(3) Promulgate rules and regulations for its own governance and for the operation and administration of the museum, with the rules and regulations being promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title;

(4) Identify the necessary controls to ensure expenditures in accordance with the law of such public funds as may be appropriated to the commission;

(5) Make regular reports to the general assembly as required; and

(6) Adopt policies designed to fulfill the duties and to attain the objectives of the commission as established by law.

(b) The commission may request and shall receive from any department, division, board, bureau, commission or agency of this state any assistance and data as will enable it properly to carry out its powers and duties under this part.

(c) The commission shall be the sole governing authority of the state museum.

History.
Acts 2009, ch. 497, § 1; 2018, ch. 821, § 17.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-20-305. Commission official agency to receive federal funding.

The commission is the official agency of the state to receive federal funding related to the functions of the museum and for regranting to other appropriate entities.

History.
Acts 2009, ch. 497, § 1.

CHAPTER 21

HUMAN RIGHTS

Part 1. General Provisions

Section
4-21-101. Purpose and intent.
4-21-102. Chapter definitions.

Part 2. Human Rights Commission

4-21-201. Commission created — Members.
4-21-202. Powers and duties.
4-21-203. Duties and responsibilities of the human rights commission to verify compliance with Title VI of the Civil Rights Act of 1964.

Part 3. Violations — Procedures

Section
4-21-301. Discriminatory practices.
4-21-302. Complaints — Consideration by commission.
4-21-303. Conciliation agreements — Temporary relief.
4-21-304. Hearings.
4-21-305. Findings and orders.
4-21-306. Remedies.
4-21-307. Judicial review.
4-21-308. Access to records.
4-21-309. Subpoenas.
4-21-310. Resistance to, obstruction, etc., of commission.
4-21-311. Additional remedies preserved — Civil Action — Allocations of burden of proof.
4-21-312. Election of civil action.
4-21-313. Limitations on compensatory damage amounts — Exclusions from application of limits.
4-21-314. Simultaneous action in state and federal courts concerning common nucleus of operative facts prohibited.

Part 4. Employment-Related Discrimination

4-21-401. Employer practices.
4-21-402. Labor organization practices.
4-21-403. Employment agency practices.
4-21-404. Training program practices.
4-21-405. Religious groups exempted.
4-21-406. Religion or sex as bona fide occupational qualifications — Affirmative action plans.
4-21-407. Age discrimination.
4-21-408. Leave for adoption, pregnancy, childbirth and nursing an infant.

Part 5. Discrimination in Public Accommodations

4-21-501. Discrimination prohibited.
4-21-502. Advertisement indicating discriminatory policy.
4-21-503. Segregation on basis of sex.

Part 6. Discrimination in Housing and Financing

4-21-601. Discriminatory housing practices generally.
4-21-602. Exemption from housing provisions.
4-21-603. Blockbusting.
4-21-604. Restrictive covenants and conditions.
4-21-605. Agency no defense in proceeding.
4-21-606. Residential real estate-related transactions.
4-21-607. Violations by real estate brokers or salespersons — Notice to real estate commission.

Part 7. Malicious Harassment

4-21-701. Creation of civil action — Damages.
4-21-702. Alternative remedies preserved.

Part 8. Civil Rights Act of 1990

4-21-801. Short title.
4-21-802. State activities and expenditures prohibited.
4-21-803. Commercial agreements with the state — Prohibition — Required statement.
4-21-804. Higher education adjunct organizations — Provision of discriminatory club membership prohibited.
4-21-805. Enforcement.
4-21-806. Exemption — Religious organizations.

Part 9. Title VI Implementation Plans

4-21-901. Development of plan — Annual reports.
4-21-902. Federal funding.
4-21-903. [Reserved.]
4-21-904. Discrimination by funded programs prohibited.
4-21-905. Filing a complaint.

Part 10. Tennessee Anti-Slapp Act of 1997

Section
4-21-1001. Short title.
4-21-1002. Legislative intent and findings.
4-21-1003. Immunity from SLAPP suits — Exceptions — Costs.
4-21-1004. Intervention by agency or attorney general and reporter.

PART 1

GENERAL PROVISIONS

4-21-101. Purpose and intent.

(a) It is the purpose and intent of the general assembly by this chapter to:

(1) Provide for execution within Tennessee of the policies embodied in the federal Civil Rights Acts of 1964, 1968 and 1972, the Pregnancy Amendment of 1978 (42 U.S.C. § 2000e(k)), and the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.);

(2) Assure that Tennessee has appropriate legislation prohibiting discrimination in employment, public accommodations and housing sufficient to justify the deferral of cases by the federal equal employment opportunity commission, the department of housing and urban development, the secretary of labor and the department of justice under those statutes;

(3) Safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age or national origin in connection with employment and public accommodations, and because of race, color, creed, religion, sex or national origin in connection with housing;

(4) Protect their interest in personal dignity and freedom from humiliation;

(5) Make available to the state their full productive capacity in employment;

(6) Secure the state against domestic strife and unrest that would menace its democratic institutions;

(7) Preserve the public safety, health and general welfare; and

(8) Further the interest, rights, opportunities and privileges of individuals within the state.

(b) The prohibitions in this chapter against discrimination because of age in connection with employment and public accommodations shall be limited to individuals who are at least forty (40) years of age.

History.

Acts 1978, ch. 748, § 2; T.C.A., § 4-2101; Acts 1980, ch. 732, §§ 1-4; 1984, ch. 1007, § 1; 1986, ch. 807, § 1; 1988, ch. 714, § 6.

Compiler's Notes.

The federal Civil Rights Act of 1964, referred to in this section, is compiled in numerous sections of 42 U.S.C.

The federal Civil Rights Act of 1968, referred to in this section, is compiled at 18 U.S.C. §§ 231-233, 241, 242, 245, 1153, 2101, 2102; 25 U.S.C. §§ 1301-1303, 1311, 1312, 1321-1326, 1331, 1341; 28 U.S.C. § 1360 notes; 42 U.S.C. §§ 1973j, 3533, 3535, 3601-3619, 3631.

The federal Civil Rights Act of 1972, referred to in this section, is codified, in part, in 20 U.S.C. § 1681.

For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

Cross-References.

Instruction on the prevention of hate crimes and sexual offenses, § 49-7-137.

Maternity leave, § 4-21-408.

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Workers' Compensation — Anderson v. Standard Register Co.: Tennessee Supreme Court Specifies Elements Required to Establish a Cause of Action for Retaliatory Discharge in Workers' Compensation Cases, 24 Mem. St. U.L. Rev. 825 (1994).

Attorney General Opinions.

Mediation by the Tennessee Human Rights Commission, OAG 94-115, 1994 Tenn. AG LEXIS 118 (10/6/94).

Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192, 1999 Tenn. AG LEXIS 206 (9/28/99).

A judge who impartially applies state anti-discrimination law, as written and enacted by the General Assembly, is fulfilling the judicial duty to "uphold and apply the law," not manifesting bias or prejudice or engaging in harassment. Tenn. Sup. Ct. R. 10, Rule 2.3 does not, nor could it, prevent a judge from faithfully applying that law in a case before the court. Tenn. Sup. Ct. R. 10, Rule 3.6 does not establish a religious test that excludes from office members of any religious organization, including ones that disapprove of or condemn homosexu-

ality. Rule 3.6 is inapplicable to membership in religious organizations. OAG 18-17, 2018 Tenn. AG LEXIS 16 (4/3/2018).

NOTES TO DECISIONS

Analysis

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1. Applicability.

Court properly ruled that the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., did not apply to the governor's rejection of judicial nominees because the governor had no authority to control, in any way, the manner and means by which judges performed their official duties, nor did the governor have the power to demote or terminate a state court judge; therefore, there was nothing weighing in favor of finding that nominees to fill a judicial vacancy were employees for purposes of the THRA. Bredesen v. Tenn. Judicial Selection Comm'n, 214 S.W.3d 419, 2007 Tenn. LEXIS 121 (Tenn. 2007).

2. Purpose.

One of the purposes of title 4, chapter 21 is to prohibit discrimination in employment and not to restrict the employer's right to make bona fide business decisions. Bruce v. Western Auto Supply Co., 669 S.W.2d 95, 1984 Tenn. App. LEXIS 2871 (Tenn. Ct. App. 1984).

Trial court properly granted the employer summary judgment on the employee's retaliation claim under T.C.A. § 4-21-301(1) (now § 4-21-301(a)(1)), because even though the employee presented sufficient evidence for a prima facie case of retaliation, the employer articulated a legitimate, non-discriminatory reason for the employee's transfer, which the employee failed to show was pretextual; the employer contended that it transferred the employee to protect her from further harassment by her supervisor, which was one of the central purposes of T.C.A. § 4-21-101(a)(1)-(4). Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

3. Legislative Intent.

The clear language from the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., evinces an unmistakable legislative intent to remove whatever immunity the electric power board may have had under the Governmental Tort Liability Act, T.C.A. § 29-20-101 et seq. Rooks v. Chattanooga Electric Power Bd., 738 F. Supp. 1163, 1990 U.S. Dist. LEXIS 8179 (E.D. Tenn. 1990).

4. Chapter Not Retroactive.

Since there was nothing in title 4, chapter 21 that would require retroactive application, the Tennessee human rights commission was without jurisdiction to investigate plaintiff's termination. Shultz v. Dempster Systems, Inc., 561 F. Supp. 1230, 1983 U.S. Dist. LEXIS 17438 (E.D. Tenn. 1983).

5. Relation to Federal Law.

Analysis of plaintiff's age discrimination claim was the same under the Tennessee Human Rights Act as under federal law. Trentham v. K-Mart Corp., 806 F. Supp. 692, 1991 U.S. Dist. LEXIS 20925 (E.D. Tenn. 1991), aff'd, 952 F.2d 403, 1992 U.S. App. LEXIS 3629 (6th Cir. Tenn. 1992).

Where plaintiff's employment discrimination claim under the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) was denied because she failed to establish that she was treated any differently from nonpregnant employees, her claim under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., was dismissed since the analysis under the federal law would be the same under the state law. Mayberry v. Endocrinology-Diabetes Assocs., 926 F. Supp. 1315, 1996 U.S. Dist. LEXIS 7588 (M.D. Tenn. 1996).

Tennessee courts may look to federal interpretation of 42 U.S.C. § 2000a for guidance in enforcing Tennessee's anti-discrimination laws, but are neither bound nor limited by federal law when interpreting title 4, chapter 21. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

An analysis of a plaintiff's claims under the Tennessee Human Rights Act, title 4, chapter 21 is identical to that under Title VII of the federal Civil Rights Act, 42 U.S.C. § 2000e. Davis v. Modine Mfg. Co., 979 S.W.2d 602, 1998 Tenn. App. LEXIS 44 (Tenn. Ct. App. 1998), review or rehearing denied, — S.W.3d —, 1998 Tenn. LEXIS 644 (Tenn. 1998).

In contrast to the Tennessee Human Rights Act, an employee may still violate the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. if the employee can perform the essential functions of her job with a reasonable accommodation. Workman v. Frito-Lay, Inc., 165 F.3d 460, 1999 FED App. 17P, 1999 U.S. App. LEXIS 478 (6th Cir. Tenn. 1999).

Tennessee courts may appropriately look to decisions of federal courts construing Title VII, 42 U.S.C. § 2000e et seq., when analyzing claims under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq.; these federal precedents do not, however, bind or limit Tennessee's courts in giving the fullest possible effect to Tennessee's own human rights legislation. Spann v. Abraham, 36 S.W.3d 452, 1999 Tenn. App. LEXIS 746 (Tenn. Ct. App. 1999).

For both Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. and Title VII, 42 U.S.C. § 2000e et seq., claims, T.C.A. § 4-21-101 provides that Tennessee is a "deferral state" that prohibits discrimination in employment based on age or race, and authorizes a state authority to grant relief. Casillas v. Fed. Express Corp., 140 F. Supp. 2d 875, 2001 U.S. Dist. LEXIS 6161, 177 A.L.R. Fed. 763 (W.D. Tenn. 2001).

Claims under T.C.A. § 4-21-101 are governed by the same burden-shifting standards as claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Wade v. Knoxville Utils. Bd., 259 F.3d 452, 2001 FED App. 246P, 2001 U.S. App. LEXIS 16932 (6th Cir. Tenn. 2001).

Tennessee courts have looked to federal case law applying the provisions of the federal anti-discrimination statutes as the baseline for interpreting and applying the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Newman v. Fed. Express Corp., 266 F.3d 401, 2001 FED App. 344P, 2001 U.S. App. LEXIS 20988 (6th Cir. Tenn. 2001).

Because a bankruptcy debtor had knowledge of her discrimination claim when she filed for bankruptcy, a motive to conceal the claim, and failed to offer any evidence from which the court could infer a lack of intent to conceal, the court found that her omission was intentional and she was judicially estopped from pursuing her discrimination claim under T.C.A. § 4-21-101. Tyler v. Fed. Express Corp., 420 F. Supp. 2d 849, 2005 U.S. Dist. LEXIS 41409 (W.D. Tenn. 2005), aff'd, — F.3d —, 2006 U.S. App. LEXIS 28626 (6th Cir. 2006).

In an action for hostile work environment discrimination on the basis of race, African-American employees submitted affidavits adequately based on their personal knowledge, as required by Fed. R. Civ. P. 56(e), when they made statements about specific racial slurs that were directed toward them, racial graffiti that they had themselves observed, the complaints that they made to their employer, and the actions that the employer subsequently took, and it was not necessary that the affidavits set forth every conceivable detail that opposing counsel could imagine. Bailey v. USF Holland, Inc., 444 F. Supp. 2d 831, 2006 U.S. Dist. LEXIS 48518 (M.D. Tenn. 2006).

In a case in which a female applicant for a firefighter position appealed a chancery court's dismissal of her Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., complaint against a city, in which she alleged that the physical agility exam for firefighters had a disparate impact on females, the three-part burden-shifting test from Title VII applied to determine whether an unlawful disparate impact existed in the physical agility exam. Hayes v. City of Lexington, 334 S.W.3d 207, 2009 Tenn. App. LEXIS 758 (Tenn. Ct. App. Nov. 12, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 541 (Tenn. May 20, 2010).

6. Jurisdiction.

Exercise of pendent jurisdiction by federal court over state age discrimination claim was not inappropriate as the state and federal remedies are not wholly duplicative and congress has not expressly precluded such a recovery. Cripps v. United Biscuit of Great Britain, 732 F. Supp. 844, 1989 U.S. Dist. LEXIS 15056 (E.D. Tenn. 1989).

There is no express consent by Tennessee, either within the Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq. or elsewhere, to suit in federal court for claims under the THRA; therefore, an action for malicious harassment against state agencies under the THRA could only be brought before the human rights commission or in chancery court. Boyd v. Tennessee State Univ., 848 F. Supp. 111, 1994 U.S. Dist. LEXIS 3781 (M.D. Tenn. 1994).

The eleventh amendment of the federal constitution was an absolute bar to an employment discrimination action against the University of Tennessee under title 4, chapter 21. Stefanovic v. University of Tennessee, 935 F. Supp. 944, 1996 U.S. Dist. LEXIS 11343 (E.D. Tenn. 1996).

While the state has waived its immunity for Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., suits in state courts, it has not done so for suits in federal courts; the THRA provides three avenues for pursuing a claim against an employer, none of which includes suit in the federal district courts. There is no express consent by Tennessee, either within the THRA nor elsewhere, to suit in federal court for claims under the THRA. Henderson v. Southwest Tenn. Cmty. College, 282 F. Supp. 2d 804, 2003 U.S. Dist. LEXIS 16161 (W.D. Tenn. 2003).

7. Waiver of Sovereign Immunity.

Dismissal of a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C.

§§ 4301-4334, was proper because, for an individual to sustain an action against a state pursuant to USERRA, the action must have been permitted by state law, and the Tennessee general assembly had not passed legislation to expressly waive its sovereign immunity from claims based on USERRA; appellant's claim that the state of Tennessee had impliedly waived its immunity from USERRA claims by expressly waiving its immunity from claims under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., and the Tennessee Disability Act, T.C.A. § 8-50-103(a), was misplaced because any such waiver had to be made in plain, clear, and unmistakable terms. The Tennessee National Guard was a division of the Tennessee Military Department, and thus was an entity of Tennessee, and accordingly, the Tennessee National Guard had immunity from claims arising under the USERRA. Smith v. Tenn. Nat'l Guard, 387 S.W.3d 570, 2012 Tenn. App. LEXIS 552 (Tenn. Ct. App. Aug. 8, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 871 (Tenn. Nov. 21, 2012), cert. denied, 85 L. Ed. 2d 365, 133 S. Ct. 1471, 568 U.S. 1195, 2013 U.S. LEXIS 1807 (U.S. 2013).

8. Administrative Exhaustion.

Civil service employee may bring an action under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., without first exhausting employee's remedies under civil service rules. Moore v. Nashville Elec. Power Bd., 72 S.W.3d 643, 2001 Tenn. App. LEXIS 734 (Tenn. Ct. App. 2001).

There is no requirement that, once an employee has chosen to institute administrative proceedings under the civil service rules, employee must see those proceedings through to their conclusion before bringing an action under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Moore v. Nashville Elec. Power Bd., 72 S.W.3d 643, 2001 Tenn. App. LEXIS 734 (Tenn. Ct. App. 2001).

9. Limitations.

T.C.A. §§ 4-21-101 and 4-21-401 are an integral part of the Tennessee Human Rights Act, and a plaintiff who filed a complaint against her former employer charging sex discrimination under these sections was subject to the one-year limitations period for an action brought under the federal civil rights statutes, as provided in T.C.A. § 28-3-104. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119, 1992 Tenn. LEXIS 204 (Tenn. 1992).

The general savings provision of T.C.A. § 28-1-105 was applicable against a governmental entity, to save an action by former city employee for race and sex discrimination. Eason v. Memphis Light, Gas & Water Div., 866 S.W.2d 952, 1993 Tenn. App. LEXIS 479 (Tenn. Ct. App. 1993).

Where the former employee was denied a promotion in July, 2000, did did not file a complaint under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq, until November 5, 2001, and the claims could not be preserved pursuant to the continuing violations theory, the claims were time-barred. George v. Aventis Pharm., 252 F. Supp. 2d 599, 2003 U.S. Dist. LEXIS 4135 (W.D. Tenn. 2003).

Where the former employee was denied a promotion in July, 2000, and did not file his complaint including state common law causes of action for outrageous conduct and negligent supervision until November 5, 2001, the period of limitation closed and the common law claims could not be preserved pursuant to the continuing violations theory. George v. Aventis Pharm., 252 F. Supp. 2d 599, 2003 U.S. Dist. LEXIS 4135 (W.D. Tenn. 2003).

10. Arbitration.

The Tennessee Uniform Arbitration Act, compiled in T.C.A. § 29-5-301 et seq., does not indicate whether claims brought under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., are subject to arbitration; accordingly, plaintiffs have the right to have their claims of sex discrimination and sexual harassment adjudicated in a judicial forum rather than through arbitration. Jacobsen v. ITT Financial Services Corp., 762 F. Supp. 752, 1991 U.S. Dist. LEXIS 5998 (E.D. Tenn. 1991).

Plaintiff's unsuccessful attempt to submit discrimination claims to arbitration did not preclude her from bringing her claim in the federal court under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., and Tennessee common law. Gray v. Toshiba Am. Consumer Prods., 959 F. Supp. 805, 1997 U.S. Dist. LEXIS 5697 (M.D. Tenn. 1997).

The Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., is exempt from the provisions of the Federal Arbitration Act, 9 U.S.C. § 1 et seq.; and when employees sign an employment contract containing an agreement to submit any dispute with their employer to binding arbitration, they do not thereby prospectively waive the right to have their claims of sex discrimination and sexual harassment under the Human Rights Act adjudicated in federal district court. Jacobsen v. ITT Financial Services Corp., 762 F. Supp. 752, 1991 U.S. Dist. LEXIS 5998 (E.D. Tenn. 1991).

11. Age Discrimination.

Employee failed to establish a failure to promote claim where the job that he had sought would not have been a promotion, but simply a lateral transfer, the employee had not established a foundation to show that the employer's reasons for denying him the new position were a pretext for age discrimination, the only evidence in the record that could be considered probative was a single statement by a manager that higher-level managers preferred younger

workers because they were go-getters, and that single piece of indirect evidence, which was probably hearsay, was too weak a foundation to support a verdict in the employee's favor. Cronk v. Nationwide Mut. Ins. Co., 376 F. Supp. 2d 800, 2005 U.S. Dist. LEXIS 13793 (M.D. Tenn. 2005).

Employee failed to show that he was constructively discharged where he admitted that the employer's restructuring never resulted in a change in his employment status or benefits and a manager's isolated statement that higher-level management preferred younger employees did not rise to the level of intolerability because there were no aggravating circumstances. Cronk v. Nationwide Mut. Ins. Co., 376 F. Supp. 2d 800, 2005 U.S. Dist. LEXIS 13793 (M.D. Tenn. 2005).

Where a fifty-eight-year-old manager was terminated as part of a reduction in force and a thirty-six-year-old manager was retained, the employer was granted summary judgment on the former manager's age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., because there was no evidence that he was singled out because of his age. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

Where a fifty-eight-year-old manager was terminated as part of a reduction in force and a thirty-six-year-old manager was retained, the employer was granted summary judgment on the former manager's age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq.; even assuming that the former manager could establish a prima facie case of age discrimination with regard to his discharge, the decision was based on job performance, and the employer's business judgment was not so riddled with error that it could not have honestly relied upon its reasons in selecting the older manager for the reduction in force. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

An older employee's claims for failure to promote in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623 and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., were insufficient to show a hostile work environment or pervasive harassment due to age. Scola v. Publix Super Mkts., Inc., 902 F. Supp. 2d 1083, 2012 U.S. Dist. LEXIS 145312 (E.D. Tenn. Oct. 9, 2012).

Where an employee allegedly was terminated for poor performance as part of a reduction in force, the employee's age discrimination claims failed because the employee did not present direct evidence of discrimination based on statements regarding older employees or evidence sufficient to show that the proffered explanation for the employee's discharge was pretextual. Lefevers v. GAF Fiberglass Corp., 2012 FED App. 23P, — F.3d —, 2012 FED App. 23P, 2012 U.S. App. LEXIS 1477 (6th Cir. Jan. 27, 2012).

In a case in which plaintiff sued a county board of education on the grounds of age discrimination and retaliation, the appellate court concluded that plaintiff identified and produced evidence to establish a prima facie case for both claims and to create a genuine issue of fact concerning whether the board's stated reasons for its actions were pretexts for discriminatory or retaliatory animus. Because facts material to the board's defense were disputed and a trier of fact could find that the reasons for lateral transferring plaintiff from a bookkeeping position to a teacher's aid position were pretextual, summary dismissal was not appropriate. Templeton v. Macon Cty., 576 S.W.3d 691, 2018 Tenn. App. LEXIS 694 (Tenn. Ct. App. Nov. 29, 2018).

As the city produced evidence to show a non-discriminatory reason for the employee's termination, the presumption of discrimination dropped away and the employee had to prove pretext, which he failed to do; the trial court did not err in deciding not to infer discriminatory intent from a council member's isolated statement and the evidence showed the city was concerned it could not afford salaries of employees with seniority. Argument that the desire to save money on salary costs was a proxy for age discrimination had been rejected by courts. Wallace v. City of Lewisburg, — S.W.3d —, 2020 Tenn. App. LEXIS 485 (Tenn. Ct. App. Oct. 30, 2020).

12. Commercial Leases.

The Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868, 1999 Tenn. App. LEXIS 18 (Tenn. Ct. App. 1999).

13. Disability Discrimination.

Nurse was entitled to significant damages for hospital's discriminatory discharge violative of this section based on nurse's physical handicap. Tuck v. HCA Health Servs., 842 F. Supp. 988, 1992 U.S. Dist. LEXIS 21861 (M.D. Tenn. 1992), aff'd, 7 F.3d 465, 1993 U.S. App. LEXIS 25164 (6th Cir. Tenn. 1993).

Where a former employee alleged that she was discriminated against because of her disability in violation of 42 U.S.C. § 12112(a) and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., her former employer was entitled to summary judgment dismissing all claims of discrimination and retaliation because the employee did not create an issue of material fact as to whether she was otherwise

qualified to perform her duties; the employee failed to specify the nature of a requested accommodation, and there was no medical documentation for any accommodation. Furthermore, the employee's repeated absences without medical documentation provided the employer with a legitimate nondiscriminatory reason for discharging the employee. Starks-Umoja v. Fed. Express Corp., 341 F. Supp. 2d 979, 2003 U.S. Dist. LEXIS 26137 (W.D. Tenn. 2003).

As a result of an automobile accident, plaintiff was partially paralyzed, had a speech impediment, and difficulty talking; plaintiff claimed that she was harassed at work. Plaintiff failed to state a claim for malicious harassment under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq; harassment based on disability was not covered by the statute. Oates v. Chattanooga Publ'g Co., 205 S.W.3d 418, 2006 Tenn. App. LEXIS 190 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 865 (Tenn. Sept. 25, 2006).

14. Employment Discrimination.

The Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., addresses discrimination in the formation and/or termination of contracts or business relationships. Harper v. BP Exploration & Oil Co., 896 F. Supp. 743, 1995 U.S. Dist. LEXIS 12350 (M.D. Tenn. 1995), modified, Harper v. BP Exploration & Oil, — F.3d —, 1998 U.S. App. LEXIS 1324 (6th Cir. Tenn. Jan. 27, 1998), aff'd, Harper v. BP Exploration & Oil, 134 F.3d 371, 1998 U.S. App. LEXIS 4529 (6th Cir. Tenn. 1998).

Where company's allegedly nondiscriminatory reasons for failing to relocate plaintiff were merely pretextual and in violation of the company's policies, this action constituted purposeful racial discrimination in direct violation of 42 U.S.C. § 1981 and the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Harper v. BP Exploration & Oil Co., 896 F. Supp. 743, 1995 U.S. Dist. LEXIS 12350 (M.D. Tenn. 1995), modified, Harper v. BP Exploration & Oil, — F.3d —, 1998 U.S. App. LEXIS 1324 (6th Cir. Tenn. Jan. 27, 1998), aff'd, Harper v. BP Exploration & Oil, 134 F.3d 371, 1998 U.S. App. LEXIS 4529 (6th Cir. Tenn. 1998).

For analysis of employment discrimination case based on racial and sexual discrimination, see Anderson v. Mead Johnson Nutritional Group, 910 F. Supp. 376, 1996 U.S. Dist. LEXIS 336 (E.D. Tenn. 1996), aff'd without opinion, 107 F.3d 870, 1997 U.S. App. LEXIS 7866 (6th Cir. Tenn. 1997).

Terminated employee's demonstration of nearly 11 months between the time of her protected activity (taking family leave) and the time of her termination was insufficient to raise a genuine issue of retaliation under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Richardson v. CVS Corp., 207 F. Supp. 2d 733, 2001 U.S. Dist. LEXIS 24760 (E.D. Tenn. 2001).

Employee provided sufficient evidence to support a claim of age and gender discrimination under the Tennessee Human Rights Act, T.C.A. § 4-21-101(a)(1), (3), where he proved that upon his being fired, a younger female employee was immediately hired to replace him, and he additionally offered sufficient proof to raise a jury issue as to whether the employer's reason for firing him, based on alleged sexual harassment, was pretextual. Wilson v. Rubin, 104 S.W.3d 39, 2002 Tenn. App. LEXIS 800 (Tenn. Ct. App. 2002), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 288, (Tenn. Mar. 17, 2003).

Where employee who was over age forty was replaced by a thirty-seven year old woman, the employer did not discriminate in terminating the employee. The employee's employment record indicated several warnings concerning emotional outbursts and loss of composure in dealing with subordinates and employee was dismissed for unprofessional behavior and failure to provide effective leadership. Fox v. Baptist Mem. Hosp. Tipton, 148 S.W.3d 903, 2002 Tenn. App. LEXIS 875 (Tenn. Ct. App. 2002), appeal denied, Fox v. Baptist Mem. Hosp. - Tipton, — S.W.3d —, 2004 Tenn. LEXIS 631 (Tenn. July 6, 2004).

Trial court reasoned that the employer did not replace the female employee, but rather that the employer eliminated the employee's job as part of a general reorganization of the company to save money; however, the employor assigned all of the employee's duties to a man at lower pay, and changed the title of the job from floor supervisor to director of operations; the employee raised genuine issues of material fact as to all four required elements of a cause of action under the Tennessee Human Rights Act, T.C.A. § 4-21-101, established a prima facie case, and summary judgment for the employer was improper. Dennis v. White Way Cleaners, L.P., 119 S.W.3d 688, 2003 Tenn. App. LEXIS 188 (Tenn. Ct. App. 2003), rehearing denied, 119 S.W.3d 688, 2003 Tenn. App. LEXIS 270 (Tenn. Ct. App. 2003), appeal denied, Dennis v. White Way Cleaners, — S.W.3d —, 2003 Tenn. LEXIS 896 (Tenn. Oct. 6, 2003).

Because the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., is intended to implement the policies of the federal civil rights laws, it would follow that a sex-plus claim could be maintained under the THRA. Gee-Thomas v. Cingular Wireless, 324 F. Supp. 2d 875, 2004 U.S. Dist. LEXIS 12875 (M.D. Tenn. 2004).

Although the employee established her prima facie case in support of her sex and sex plus marital and family status discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Ten-

nessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., the employee was unable to pass the high bar necessary to establish that her competing qualifications might have created a triable issue of pretext, because the differences between the candidates were not so favorable to the employee as to forestall dispute among reasonable persons of impartial judgment that the employee was clearly better qualified for the position; therefore, the employer's motion for summary judgment was granted. Gee-Thomas v. Cingular Wireless, 324 F. Supp. 2d 875, 2004 U.S. Dist. LEXIS 12875 (M.D. Tenn. 2004).

Employee failed to establish reverse race and gender discrimination in violation of the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., based on the employer's promotion of others to two certain jobs, because: (1) Regarding an administrative job: (a) The employer did not have a policy of only promoting African-Americans; (b) The employee would not have applied for the job even if it had been advertised; and (c) The employee was not similarly situated with the successful candidate, who, unlike the employee, had actual experience in the job; and (2) Regarding a general counsel position: (a) There was no evidence of gender bias; and (b) The successful candidate was better qualified in terms of academic achievement, experience, and work record. Leadbetter v. Gilley, 385 F.3d 683, 2004 FED App. 329P, 2004 U.S. App. LEXIS 20467 (6th Cir. Tenn. 2004), rehearing denied, — F.3d —, 2005 U.S. App. LEXIS 1749 (6th Cir. 2005).

Summary judgment in favor of the employer with regard to the employee's claim of gender-based wage discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Equal Pay Act, 29 U.S.C. § 206(d)(1) and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., was affirmed because the employer presented substantial evidence that the difference in the starting salaries of the employee and the male co-worker were based upon a factor other than sex, specifically, the male co-workers previous employment experience. Balmer v. HCA, Inc., 423 F.3d 606, 2005 FED App. 392P, 2005 U.S. App. LEXIS 19755 (6th Cir. Tenn. 2005).

Where a fifty-eight-year-old manager claimed that he was chosen over a thirty-six-year-old manager for termination as part of a reduction in force because he twice complained about improper practices, the employer was granted summary judgment on the former manager's retaliatory discharge claim because the first complaint was made more than eight months before he was terminated and the second complaint was made after the decision to terminate him had been made. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

Where a fifty-eight-year-old manager claimed that he was chosen over a thirty-six-year-old manager for termination as part of a reduction in force because he twice complained about improper practices, the employer was granted summary judgment on the former manager's retaliatory discharge claim because, even assuming that the former manager could establish a prima facie case of retaliation, the former manager failed to show a genuine issue of material fact concerning the validity of the employer's explanation that the former manager was chosen for the reduction in force because his performance rating was lower than that of the manager who was retained. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

Where a fifty-eight-year-old manager was terminated as part of a reduction in force and a thirty-six-year-old manager was retained, the employer was granted summary judgment on the former manager's age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., because there was no evidence that he was singled out because of his age. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

Where a fifty-eight-year-old manager was terminated as part of a reduction in force and a thirty-six-year-old manager was retained, the employer was granted summary judgment on the former manager's age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., because, even assuming that the former manager could establish a prima facie case of age discrimination with regard to his discharge, the decision was based on job performance, and the court could not find, as a matter of law, that the employer's business judgment was so ridden with error that it could not have honestly relied upon its reasons in selecting the former manager for the reduction in force. Southmayd v. Apria Healthcare, Inc., 412 F. Supp. 2d 848, 2006 U.S. Dist. LEXIS 6145 (E.D. Tenn. 2006).

When African-American employees complained about the use of the terms "boy" and "damn it boy" toward them at work and the use of the terms increased, not decreased, after management implemented an anti-harassment policy, the employees could maintain an action against their employer for racial discrimination; regardless of whether the terms "boy" and "damn it boy" were a Southern thing, as the employer's attorney suggested when he investigated the employees' complaints, the language was offensive under the circumstances and persisted after coworkers were told why those terms could be offensive. Bailey v. USF

Holland, Inc., 444 F. Supp. 2d 831, 2006 U.S. Dist. LEXIS 48518 (M.D. Tenn. 2006).

District court properly granted summary judgment for an employer in a former employee's action claiming race discrimination; African-American lieutenant security guard established a prima facie case of race discrimination because the employer did not refute his claim that he was replaced by a white male, but the security guard failed to establish pretext as to the employer's claim that he was discharged because he allegedly sexually harassed at least one of his subordinates, because he had job performance issues and because he failed to follow established procedures. Wright v. Murray Guard, Inc., 2006 FED App. 261P, 2006 U.S. App. LEXIS 18672 (6th Cir. 2006).

District court's bench trial judgment in favor of two African-American employees was proper in their action alleging a hostile work environment based on race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq.; persistent taunting by the employees' co-workers with the word "boy" and other racially hostile actions resulted in an unreasonably abusive environment, and the employer's response was not prompt or sufficient. Bailey v. USF Holland, Inc., 526 F.3d 880, 2008 FED App. 184P, 2008 U.S. App. LEXIS 10518 (6th Cir. May 16, 2008).

Reasonable jury could have found, under the facts of the case, that the employee's reassignment was materially adverse because it, in essence, changed her status from being one of the team to being a problem to be dealt with; the adversity presented by this development was particularly acute, given the communal nature and the demands of the firehouse environment. As a reasonable jury could have concluded that this situation significantly exceeded a mere inconvenience or a trivial benefit reduction, the employer was not entitled to post-trial relief based on the argument that the employee did not suffer a materially adverse employment action; the policy guaranteed the employee's similarly-situated male peers a level of privacy and comfort that the employee could not expect and for these reasons, the employer was not entitled to post-trial relief based upon the argument that the employee was treated no differently than similar-situated male employees. Stuart v. Metro. Gov't, 679 F. Supp. 2d 851, 2009 U.S. Dist. LEXIS 118620 (M.D. Tenn. Dec. 21, 2009).

Where an employee was terminated allegedly for violating a company policy regarding the use of a user-identification code, the employee's sex discrimination claims failed because the employee did not show pretext: (1) The employer held an honest belief that the employee had violated company policy; and (2) The decision to terminate the employee was not so unreasonable so as to give rise to an inference of pretext. Sybrandt v. Home Depot, U.S.A., Inc., 560 F.3d 553, 2009 FED App. 117P, 2009 U.S. App. LEXIS 6401 (6th Cir. Mar. 26, 2009).

In a case in which a female applicant for a firefighter position appealed a chancery court's dismissal of her Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., complaint against a city, in which she alleged that the physical agility exam for firefighters had a disparate impact on females, the physical agility exam did not cause a disparate impact on the basis of sex. She could have used an end-to-end method to replace a 24-foot ladder on a fire engine when she took the physical agility exam in 2005, but she failed to do so. Hayes v. City of Lexington, 334 S.W.3d 207, 2009 Tenn. App. LEXIS 758 (Tenn. Ct. App. Nov. 12, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 541 (Tenn. May 20, 2010).

Evidence submitted by the employee was sufficient to raise a fact question regarding whether the harassment was severe or pervasive enough to state a hostile work environment claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., because the employee repeatedly complained about the supervisor's treatment of him and asserted that that treatment was based on his race and national origin, and while the union representative testified that using swear words may be common in his 26 years of experience in the construction industry, the use of racial slurs was not. Moreover, while it did appear that the supervisor was "a jerk" to employees other than the employee, it appeared that much of that behavior also consisted of racial slurs directed at African-American employees. Cervantes v. Nashville Mach. Elevator Co., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 648 (M.D. Tenn. Jan. 4, 2011).

Employee had not made out a prima facie case of race and national origin discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., regarding the decision not to rehire him subsequent to his May 2009 layoff because the employee only pointed to his initial allegation that none of the rehired workers were Hispanic; however, he had not alleged that any of the non-Hispanic rehired workers were similar to him in the relevant aspects: that any had a history of absenteeism or had repeatedly failed the mechanic test. Since the employer claimed that those were the factors that animated the decision not to rehire the employee, in order to make out his prima facie case, the employee had to point to an employee who was rehired despite those or similar factors; that he had not done. Cervantes v. Nashville Mach. Elevator Co., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 648 (M.D. Tenn. Jan. 4, 2011).

In a case alleging sex discrimination under Title VII, 42 U.S.C. § 2000e-2, age discrimination under 29 U.S.C. § 623, and discrimination under the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101, brought by a 54-year-old female sergeant in a county sheriff's office, the employee failed to present evidence of adverse treatment sufficient to survive summary judgment on this basis. While the employee was reassigned to another division, the evidence failed to show that the reassignment was a demotion. Blackburn v. Shelby County, 770 F. Supp. 2d 896, 2011 U.S. Dist. LEXIS 16851 (W.D. Tenn. Feb. 18, 2011).

Employer was entitled to summary judgment in an African-American employee's discrimination claim under the Tennessee Human Rights Act, T.C.A. § 4-21-101, wherein the employee alleged his white supervisors disciplined him in a harsher manner than similarly situated white co-workers, because the three alleged comparators identified by the employee did not have any discipline on their records, while the employee had significant prior discipline and, as such, the three co-workers were not similarly situated; the employee failed to make out a prima facie case of racial discrimination. Boges v. GM Co., 808 F. Supp. 2d 1043, 2011 U.S. Dist. LEXIS 45543 (M.D. Tenn. Apr. 27, 2011).

In an action in which an employee alleged that she was demoted from her position as a senior buyer to the position of assistant shipping administrator because of her gender, an employer was entitled to summary judgment on sex discrimination claims brought pursuant to 42 U.S.C. § 2000e-2(a)(1) and T.C.A. § 4-21-101(a)(3) because the employee was replaced by another female employee and there was no evidence showing that the employee was treated differently than similarly situated male employees; a male senior buyer was not similarly situated because there was no evidence showing that the male senior buyer's customers made any complaints about him, that the male senior buyer's supervisors complained about the accuracy and expediency of his work, or that the male senior buyer was accused of using the internet for personal reasons. Womack v. Brown-Forman Corp., 897 F. Supp. 2d 646, 2012 U.S. Dist. LEXIS 136970 (E.D. Tenn. Sept. 25, 2012).

Employee for a package delivery service, who worked in various managerial roles, failed to show that he was placed on a performance improvement plan and demoted due to his race, in violation of Title VII, § 1983, and state law because stray racial remarks were not direct evidence of discrimination and he failed to show that other Caucasian managers had comparable work deficiencies but were not demoted since none of the managers were valid comparators as they did not have comparable experience, serious performance deficiencies, or disciplinary history; 840 F.3d 292, 2016 FED App. 261N, 2016 U.S. App. LEXIS 19106 (6th Cir. Oct. 24, 2016).

Employee's discrimination suit against a university and certain administrators, brought as a personal tort action and/or an employment discrimination suit, was properly dismissed for failure to state a claim upon which relief could be granted because the employee sought (1) the disqualification (and presumably removal) of certain individuals at the university, such as the president, (2) disqualification of the appointments of various officials, and (3) dismissal of decisions made by an allegedly illegal committee, all of which exceeded the court's authority under the applicable statutes. Nagarajan v. Sharpe, — S.W.3d —, 2018 Tenn. App. LEXIS 106 (Tenn. Ct. App. Feb. 27, 2018).

15. Religious Discrimination.

The reasonable accommodation of religion standard has been incorporated into Tennessee law through this legislation. De Priest v. Puett, 669 S.W.2d 669, 1984 Tenn. App. LEXIS 3394 (Tenn. Ct. App. 1984), cert. denied, 469 U.S. 1034, 105 S. Ct. 505, 83 L. Ed. 2d 397, 1984 U.S. LEXIS 4467 (1984).

16. Racial Discrimination.

Employer was not entitled to summary judgment as to a former employee's Tennessee Human Rights Act claim alleging racial discrimination creating a hostile work environment because the employee offered evidence creating a fact issue as to the employer's proffered allegedly non-discriminatory reason for the employee's termination, as (1) most discriminatory statements occurred a few months before the termination, and (2) the trial court did not fully appreciate the severity of alleged discriminatory conduct or whether the statements were humiliating. Whitney v. First Call Ambulance Serv., — S.W.3d —, 2019 Tenn. App. LEXIS 224 (Tenn. Ct. App. Mar. 8, 2019).

17. Sexual Harassment.

In determining whether challenged sexual misconduct is severe or persuasive enough to constitute actionable sexual harassment, the court should consider: (1) The frequency of the discriminatory conduct; (2) Severity of the conduct; (3) Whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) Whether the conduct unreasonably interferes with an employee's work performance. Bullion v. Ford Motor Co., 60 F. Supp. 2d 765, 1999 U.S. Dist. LEXIS 12302 (M.D. Tenn. 1999).

Under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., an employer is subject to vicarious liability where an employee is victimized by hostile work environment sexual harassment committed by a supervisor with immediate (or successively higher) authority over the employee. Parker v. Warren County

Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999).

Employer was not entitled to summary judgment on a former employee's claim of hostile work environment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq.; the male employee claimed severe and pervasive harassment that was based on his status as a member of a protected class because he alleged same-sex harassment based on sex, not sexual orientation. Ellsworth v. Pot Luck Enters., 624 F. Supp. 2d 868, 2009 U.S. Dist. LEXIS 47249 (M.D. Tenn. June 5, 2009).

In a sexual harassment suit under Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., summary judgment was improper because a factual issue remained whether plaintiff employee's complaints to her shift leader effectively gave notice to her employer, and a jury could find that the shift leader's failure to discipline the harassing coworker or to address repeated complaints in any meaningful way for weeks on end qualified as unreasonable indifference. Blevins v. Famous Recipe Co. Operations, LLC, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 111205 (M.D. Tenn. Nov. 30, 2009).

Record contained sufficient evidence for a trier of fact to find that plaintiff was subject to a hostile work environment in violation of the Tennessee Human Rights Act where she was targeted as the only woman on the job site and, as a consequence, was mistreated by both overtly gendered misconduct as well as misconduct that was on its face, gender-neutral, including physical intimidation and assaults. Anderson v. URS Energy & Constr., Inc., — F. Supp. 2d —, 2016 U.S. Dist. LEXIS 79212 (M.D. Tenn. June 17, 2016).

Plaintiff established a prima facie claim of retaliation in violation of the Tennessee Human Rights Act where she engaged in protected activity by complaining about gender-based harassment, she placed defendant on notice of her protected activity, and she was terminated within days of her most serious complaint. Plaintiff produced evidence that defendant's proffered non-discriminatory reason for her termination -- a routine reduction in force -- was pretextual where she was expressly warned by her supervisors that her complaints could lead to termination and where, as she lodged more complaints, the harassment against her worsened and began to include physical intimidation and assault (without repercussion). Anderson v. URS Energy & Constr., Inc., — F. Supp. 2d —, 2016 U.S. Dist. LEXIS 79212 (M.D. Tenn. June 17, 2016).

Although plaintiff's claim for hostile work environment was worded as a claim for sexual harassment in the pleadings, her legal claim for sexual harassment could be used interchangeably with a claim for hostile work environment based on sex or gender, which was what she pled and argued. Anderson v. URS Energy & Constr., Inc., — F. Supp. 2d —, 2016 U.S. Dist. LEXIS 79212 (M.D. Tenn. June 17, 2016).

18. Worker's Compensation Law.

In determining whether an employee's claims under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., are barred by the exclusive remedy provision of the Worker's Compensation Law, T.C.A. § 50-6-108, a trial court must determine whether an employee's claim is based upon real discrimination or arises from employer misconduct that is a normal part of the employment relationship; T.C.A. § 50-6-108 will bar claims of the latter type. Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519, 1991 Tenn. App. LEXIS 189 (Tenn. Ct. App. 1991).

T.C.A. § 50-6-241(d)(1)(A) used in conjunction with the AMA Guides does not result in prohibited discrimination under the Tennessee Human Rights Act or the Tennessee Handicap Act (now the Tennessee Disability Act), T.C.A. § 8-50-103(a). Lynch v. City of Jellico, 205 S.W.3d 384, 2006 Tenn. LEXIS 759 (Tenn. 2006), cert. denied, 549 U.S. 1280, 127 S. Ct. 1830, 167 L. Ed. 2d 320, 2007 U.S. LEXIS 3049 (2007).

19. Review.

A court of appeals should not review a case for whether a prima facie case had been made, but rather, whether the ultimate issue of discrimination falls in favor of the plaintiff or defendant; evidence that bears upon elements of the prima facie case can also come into play in assessing the ultimate question of discrimination. Roh v. Lakeshore Estates, Inc., 241 F.3d 491, 2001 FED App. 49P, 2001 U.S. App. LEXIS 2759 (6th Cir. Tenn. 2001), rehearing denied, — F.3d —, 2001 U.S. App. LEXIS 7897 (6th Cir. Apr. 16, 2001).

Employer was properly granted summary judgment in employee's age and sex discrimination action filed under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., because the employee submitted insufficient evidence to establish the fourth element of his prima facie case, that he was either replaced by an employee outside the protected class or that he was treated less favorably than a similarly situated employee outside the protected class; the only evidence in the record indicating that a younger female employee replaced the employee was a record showing that her first loan was processed one month after the employee was terminated. Bundy v. First Tenn. Bank Nat'l Ass'n, 266 S.W.3d 410, 2007 Tenn. App. LEXIS 762 (Tenn. Ct. App. Dec. 13, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 471 (Tenn. June 2, 2008).

20. Punitive Damages.

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high bur-

den of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741, 1995 U.S. Dist. LEXIS 12357 (M.D. Tenn. 1995).

4-21-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the Tennessee human rights commission;

(2) "Commissioner" means a member of the commission;

(3)(A) "Disability" means, with respect to a person:

(i) A physical or mental impairment that substantially limits one (1) or more of such person's major life activities;

(ii) A record of having such an impairment; or

(iii) Being regarded as having such an impairment;

(B) "Disability" does not include current, illegal use of, or addiction to, a controlled substance or controlled substance analogue;

(4) "Discriminatory practices" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age or national origin;

(5) "Employer" means the state, or any political or civil subdivision thereof, and persons employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly;

(6) "Employment agency" means any person or agency, public or private, regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer;

(7) "Familial status" means one (1) or more individuals, who have not attained eighteen (18) years of age, being domiciled with:

(A) A parent or another person having legal custody of such individual or individuals; or

(B) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or who is in the process of securing legal custody of any person who has not attained eighteen (18) years of age;

(8) "Family" includes a single individual;

(9) "Financial institution" means a bank, banking organization, mortgage company, insurance company or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvements of real property, or an individual employed by or acting on behalf of any of these;

(10) "Hearing examiner" is one (1) or more persons or commissioners, designated by the commission to conduct a hearing. The commission has the sole power to determine qualifications of the hearing examiner;

(11) "Housing accommodation" includes improved and unimproved property and means a building, structure, lot or part thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as the

home or residence of one (1) or more individuals;

(12) "Labor organization" includes any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for organizations;

(13) "National origin" includes the national origin of an ancestor;

(14) "Person" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons;

(15) "Places of public accommodation, resort or amusement" includes any place, store or other establishment, either licensed or unlicensed, that supplies goods or services to the general public or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, except that:

(A) A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and

(B) Its facilities or services are available only to its members and their bona fide guests;

(16) "Real estate broker" or "real estate salesperson" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such activity; or who advertises or holds such individual out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby such individual undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these;

(17) "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entities, or the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of any of these;

(18) "Real estate transaction" includes the sale, exchange, rental or lease

of real property;

(19) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in these; and

(20) "Sex" means and refers only to the designation of an individual person as male or female as indicated on the individual's birth certificate.

History.

Acts 1978, ch. 748, § 3; T.C.A., § 4-2102; Acts 1980, ch. 732, § 5; 1984, ch. 1007, § 2; 1990, ch. 937, § 1; 1992, ch. 1027, § 1; 2008, ch. 706, § 1; 2011, ch. 278, § 2; 2012, ch. 848, § 2.

Compiler's Notes.

Acts 2011, ch. 278, § 1 provided that the act shall be known and may be cited as the "Equal Access to Intrastate Commerce Act."

Law Reviews.

Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Attorney General Opinions.

A judge who impartially applies state anti-discrimination law, as written and enacted by the General Assembly, is fulfilling the judicial duty to "uphold and apply the law," not manifesting bias or prejudice or engaging in harassment. Tenn. Sup. Ct. R. 10, Rule 2.3 does not, nor could it, prevent a judge from faithfully applying that law in a case before the court. Tenn. Sup. Ct. R. 10, Rule 3.6 does not establish a religious test that excludes from office members of any religious organization, including ones that disapprove of or condemn homosexuality. Rule 3.6 is inapplicable to membership in religious organizations. OAG 18-17, 2018 Tenn. AG LEXIS 16 (4/3/2018).

NOTES TO DECISIONS

Analysis

1. "Employer."
2. "Disability."
3. "Discriminatory Practice."
4. "Person."
5. "Places of Public Accommodation, Resort or Amusement."
6. Real Property.
7. —Commercial Leases.
8. Employment Actions.
9. Waiver of Sovereign Immunity.

1. "Employer."

The term "agent" within the definition of "employer" does not include an employee or supervisor and, thus, the Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., did not allow a supervisor to be sued in his individual capacity in an action against an employer and the supervisor alleging sexual harassment. Burnett v. Tyco Corp., 932 F. Supp. 1039, 1996 U.S. Dist. LEXIS 10517 (W.D. Tenn. 1996).

The "agent of an employer" language in the definition of "employer" does not impose individual liability. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

State judge's actions, if proven to constitute quid pro quo sexual harassment of county employee under the judge's supervision, could be imputed to the state, since it empowered the judge with the authority the judge allegedly abused in an attempt to gain sexual favors. Sanders v. Lanier, 968 S.W.2d 787, 1998 Tenn. LEXIS 95 (Tenn. 1998).

Even if the county employee was not deemed to have been plaintiff's employer, he could be found liable in his individual capacity if he were proven to have aided, abetted, incited, compelled or commanded a person to engage in a discriminatory act or practice; while plaintiff's complaint did not track this particular language, she did allege that he oversaw the creation and maintenance of a racially discriminatory hiring and promotion policy. Word v. Knox Cty., — S.W.3d —, 2020 Tenn. App. LEXIS 70 (Tenn. Ct. App. Feb. 20, 2020).

2. "Disability."

Cancer is an illness that may be perceived or regarded as limiting a major life activity in a substantial manner and thus qualifies as a "handicap" under the statutory definition. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 417, 1998 Tenn. LEXIS 209 (Tenn. 1998).

The appropriate framework for analyzing a handicap discrimination claim under the Tennessee Handicap Act (THA) (now the Tennessee Disability Act), codified in § 8-50-103, and the Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., is that the claimant must: (1) Establish qualification as an individual with a disability; (2) Show the ability to perform the essential functions of the job with or without reasonable accommodation; and (3) Show subjection to an adverse employ-

ment action on the basis of a protected disability. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

The definition of handicap includes individuals perceived or "regarded" as having an impairment that substantially limits a major life activity; thus, while the impairment may not have substantially limited a major life activity, the plaintiff may be regarded as disabled if the defendant treated the plaintiff as if the impairment substantially limited a major life activity. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

Employee did not have a physical or mental impairment that substantially limited a major life activity because the employee, by his own testimony and that of his treating physician, acknowledged that the employee had fully recovered from his most recent surgery within three to four months. Moreover, the employee admitted that when the employer made its decision to place him on leave he felt "great" and was ready to work. Bennett v. Nissan N. Am., Inc., 315 S.W.3d 832, 2009 Tenn. App. LEXIS 299 (Tenn. Ct. App. Mar. 27, 2009), appeal denied, Bennett v. Nissan North Am., Inc., — S.W.3d —, 2009 Tenn. LEXIS 812 (Tenn. Nov. 23, 2009).

Employer presented sufficient evidence to negate that the employee was "qualified" for the position because, while the employee's restrictions did not exceed the essential functions of the job, the employer showed that the employee's injuries had increased in frequency and severity over the course of his employment. Bennett v. Nissan N. Am., Inc., 315 S.W.3d 832, 2009 Tenn. App. LEXIS 299 (Tenn. Ct. App. Mar. 27, 2009), appeal denied, Bennett v. Nissan North Am., Inc., — S.W.3d —, 2009 Tenn. LEXIS 812 (Tenn. Nov. 23, 2009).

Question of material fact existed as to whether the employer regarded the employee as substantially limited in the major life activity of working because the employer thought that the employee could not or at least should not continue working in "automobile production manufacturing" or in "repetitive heavy industry." Bennett v. Nissan N. Am., Inc., 315 S.W.3d 832, 2009 Tenn. App. LEXIS 299 (Tenn. Ct. App. Mar. 27, 2009), appeal denied, Bennett v. Nissan North Am., Inc., — S.W.3d —, 2009 Tenn. LEXIS 812 (Tenn. Nov. 23, 2009).

In an atypical regarded-as discrimination case in that the purported source of the physical restrictions the employer imposed on the employee was a state-court order rather than the employer's own conclusions about the employee's capabilities, the central issue was the legitimacy of the nondiscriminatory reason offered by the employer for its actions, that it relied on the order of the workers' compensation chancellor. This defense failed as a matter of law because as a matter of law and fact, the order did not require that the employer take the actions it took; there was no genuine issue whether the employer independently assessed the employee's physical capabilities; and there was no genuine issue whether the employer made the reasonable assessment and inquiry required to assert an honest-belief defense. No reasonable jury could conclude that the employer had an honest belief based on a reasonably informed and considered decision that the chancellor ordered the employer to impose restrictions on the employee such that he could no longer do the job the chancellor found he was able to do and assumed he would continue doing. Jones v. Nissan N. Am., Inc., 2011 FED App. 0582N, 438 Fed. Appx. 388, 2011 U.S. App. LEXIS 17412, 2011 FED App. 582N (6th Cir.).

3. "Discriminatory Practice."

Employee failed to state a claim against the employer under the Tennessee Human Rights Act because the employee failed to show that he engaged in a protected activity or fell within a protected class, and the employee had not alleged a discriminatory practice by the employer in the complaint or that the employer retaliated or discriminated against him for opposing or interacting in any fashion with such a practice. Thurmer v. Charter Communs., LLC, — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 59713 (E.D. Tenn. Apr. 30, 2014).

4. "Person."

A state university fell within the definition of "person" for purposes of an action for retaliation under the Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Roberson v. University of Tenn., 912 S.W.2d 746, 1995 Tenn. App. LEXIS 558 (Tenn. Ct. App. 1995).

5. "Places of Public Accommodation, Resort or Amusement."

Hotel lounge that served alcohol and provided a meeting place to socialize and dance satisfied the definition of a place of public accommodation. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

Although the policies of the federal acts and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., were coextensive, the reach of the THRA was in no way limited by the constraints found in the federal acts; the intent of the general assembly to prohibit discrimination, as clearly articulated in the THRA, combined with the plain and unambiguous definition of "places of public accommodation" found in T.C.A. § 4-21-102, could result in only one conclusion, that the pizza chain was a place of public accommodation under the THRA. Arnett v. Domino's Pizza I, LLC, 124 S.W.3d 529, 2003 Tenn. App. LEXIS 514 (Tenn. Ct. App. 2003), appeal denied, Arnett v. Domino's Pizza, L.L.C., — S.W.3d —, 2003 Tenn. LEXIS 1284 (Tenn.

2003), superseded by statute as stated in, Consol. Waste Sys., LLC v. Metro Gov't of Nashville, — S.W.3d —, 2005 Tenn. App. LEXIS 382 (Tenn. Ct. App. June 30, 2005).

6. Real Property.

7. —Commercial Leases.

The Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868, 1999 Tenn. App. LEXIS 18 (Tenn. Ct. App. 1999).

8. Employment Actions.

While the impairment may not have substantially limited a major life activity, the plaintiff may be regarded as disabled if the defendant treated the plaintiff as if the impairment substantially limited a major life activity. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

Some adverse employment actions are: (1) Termination of employment; (2) Demotion evidenced by a decrease in wage or salary, by a less distinguished title, or by a material loss of employment benefits; or (3) A significant reduction of material responsibilities. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

A record of absenteeism may be irrelevant when addressing an ongoing qualification to perform a specific job; in determining whether an individual is a "qualified individual," courts may look to whether the level of unscheduled absenteeism was detrimental to the employer's consideration. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

The claimant can establish discrimination on the basis of a protected disability under either a direct evidence method or an indirect evidence method; the former entitles the claimant to judgment unless the employer shows that an impermissible motive did not play a role in the employment decisions. Barnes v. Goodyear Tire & Rubber Co., 48 S.W.3d 698, 2000 Tenn. LEXIS 288 (Tenn. 2000).

9. Waiver of Sovereign Immunity.

Dismissal of a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4334, was proper because, for an individual to sustain an action against a state pursuant to USERRA, the action must have been permitted by state law, and the Tennessee general assembly had not passed legislation to expressly waive its sovereign immunity from claims based on USERRA; appellant's claim that the state of Tennessee had impliedly waived its immunity from USERRA claims by expressly waiving its immunity from claims under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., and the Tennessee Disability Act, T.C.A. § 8-50-103(a), was misplaced because any such waiver had to be made in plain, clear, and unmistakable terms. The Tennessee National Guard was a division of the Tennessee Military Department, and thus was an entity of Tennessee, and accordingly, the Tennessee National Guard had immunity from claims arising under the USERRA. Smith v. Tenn. Nat'l Guard, 387 S.W.3d 570, 2012 Tenn. App. LEXIS 552 (Tenn. Ct. App. Aug. 8, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 871 (Tenn. Nov. 21, 2012), cert. denied, 85 L. Ed. 2d 365, 133 S. Ct. 1471, 568 U.S. 1195, 2013 U.S. LEXIS 1807 (U.S. 2013).

Appellate court erred in holding that the Governmental Tort Liability Act (GTLA) applied to a former police chief's age-discrimination claims against a city under the Tennessee Human Rights Act (THRA) because the THRA evinced an unmistakable legislative intent to remove whatever immunity a governmental entity might have had under the GTLA, the THRA clearly established a right to trial by jury on THRA claims filed in chancery court. Sneed v. City of Red Bank, 459 S.W.3d 17, 2014 Tenn. LEXIS 962 (Tenn. Dec. 2, 2014).

PART 2

HUMAN RIGHTS COMMISSION

4-21-201. Commission created — Members.

(a) There is hereby created the Tennessee human rights commission.

(b)(1) The commission shall consist of nine (9) members to be appointed as follows:

(A) The speaker of the senate shall appoint two (2) members;

(B) The speaker of the house of representatives shall appoint two (2) members; and

(C) The governor shall appoint five (5) members.

(2) Three (3) members of the commission shall reside in each grand division.

(3) The appointing authorities shall consult with each other prior to appointing any member to the commission to ensure that appointments are made in accordance with this subsection (b).

(c)(1) The entire membership of the commission as comprised on December 31, 2014, shall be vacated on January 1, 2015, and new members shall be appointed in accordance with subsection (b).

(2) In order to stagger the terms of the newly appointed commission members, initial appointments shall be made as follows:

(A) Each of the appointing authorities shall make one (1) initial appointment for a term that shall begin on January 1, 2015, and expire on June 30, 2017;

(B) The governor shall make three (3) initial appointments for a term that shall begin on January 1, 2015, and expire on June 30, 2019; and

(C) Each of the appointing authorities shall make one (1) initial appointment for a term that shall begin on January 1, 2015, and expire on June 30, 2021.

(d)(1) Following the expiration of members' initial terms as prescribed in subdivision (c)(2), all appointments to the commission shall be for terms of six (6) years and shall begin on July 1 and terminate on June 30, six (6) years thereafter.

(2) All members shall serve until the expiration of the term to which they were appointed and until their successors are appointed and qualified.

(3) A vacancy occurring other than by expiration of a term shall be filled in the same manner as the original appointment but for the unexpired term only.

(4) Successors shall be appointed from the same grand divisions in which the members they are replacing reside.

(5) Members shall be eligible for reappointment to the commission following the expiration of their terms, but shall serve no more than two (2) consecutive six-year terms.

(e) The commission shall designate one (1) of its members to serve as chair for a two-year term. The chair may be reappointed to serve for one (1) additional term. No member may serve as chair for more than two (2) consecutive terms.

(f) The members shall be appointed on a nonpartisan basis and shall be broadly representative of employees, proprietors, trade unions, religious groups, human rights' groups and the general public.

(g) The members are entitled to reimbursement for expenses incurred in the performance of their duties and to reasonable fees for each day of service as hearing examiners.

(h) A commissioner who is absent from more than three (3) regularly scheduled meetings in the course of the commission's fiscal year may be removed from the commission by the respective appointing authority.

History.

Acts 1978, ch. 748, §§ 4, 5; T.C.A., § 4-2103; Acts 1983, ch. 64, § 1; T.C.A., § 4-21-103; Acts 2005, ch. 229, § 1; 2014, ch. 988, § 1.

Compiler's Notes.

The human rights commission, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Acts 2011, ch. 326, § 3 provided that the division of state audit shall return to the human rights commission on November 1, 2011, to review actions taken by the commission to address the internal control issues raised in the fourth finding in the April, 2011, performance audit report. The division shall report its findings to the chairs of the government operations committees of the senate and the house of representatives.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

4-21-202. Powers and duties.

In the enforcement of this chapter, the commission has the power and duty to:

(1) Maintain offices in Shelby County, Davidson County, Knox County and Hamilton County and such other offices within the state as may be deemed necessary;

(2) Meet and exercise its powers within the state;

(3) Annually appoint an executive director, fix the director's compensation with the approval of the governor, and delegate any of its functions and duties to the director in the interest of efficient management of the appropriations and resources of the agency;

(4) Promote the creation of local commissions on human rights, to cooperate with state, local and other agencies, both public and private, and individuals, and to obtain upon request and utilize the services of all governmental departments and agencies;

(5) Enter into cooperative working agreements with local commissions that have enforceable ordinances, orders, or resolutions and professional staff;

(6) Cooperate with the federal equal employment opportunity commission created under § 705 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-4), and with the department of housing and urban development in enforcing the Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.), in order to achieve the purposes of those acts, and with other federal and local agencies in order to achieve the purposes of this chapter;

(7) Accept and disburse gifts and bequests, grants or other payments, public or private, to help finance its activities;

(8) Accept reimbursement pursuant to § 709(b) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-8), and pursuant to § 816 of the Fair Housing Act of 1968 (42 U.S.C. § 3616), for services rendered to assist the federal equal employment opportunity commission and the department of housing and urban development;

(9) Receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging violations of this chapter;

(10) Require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation in person by deposition, and require the production of documents relevant to the complaint. The commission may make rules authorizing or designating any member or individual to exercise these powers in the performance of official duties;

(11) Furnish technical assistance requested by persons subject to this chapter to further their compliance with this chapter or an order issued

thereunder;

(12) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results thereof available to the public;

(13) Render, in accordance with the rules, regulations, policies and procedures of the state publications committee, a written report. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter;

(14) Adopt, promulgate, amend and rescind rules and regulations to effectuate the purposes and provisions of this chapter, including regulations requiring the posting of notices prepared or approved by the commission;

(15) Cooperate with community, professional, civic and religious organizations, federal agencies and agencies from other states in the development of public information programs, leadership and activities in the interest of equal opportunity and treatment of all individuals;

(16)(A) Create local or statewide advisory agencies that in its judgment will aid in effectuating the purposes of this chapter. The commission may empower these agencies to:

(i) Study and report on problems of discrimination because of race, creed, color, religion, sex, age or national origin;

(ii) Foster through community effort or otherwise, goodwill among the groups and elements of the population of the state; and

(iii) Make recommendations to the commission for the development of policies and practices that will aid in carrying out the purposes of this chapter;

(B) Members of such advisory agencies shall serve without pay, but shall be reimbursed for expenses incurred in such services. The commission may make provision for technical and clerical assistance to the advisory agencies; and

(17) Conduct tests of housing accommodations and availability through the use of staff, both full time and part time, and of volunteers to ascertain the availability of housing, both in sales and also in rentals of real property.

History.

Acts 1978, ch. 748, § 6; 1979, ch. 422, § 25; T.C.A., § 4-2104; Acts 1980, ch. 732, § 5; 1984, ch. 1007, § 3; T.C.A., § 4-21-104; Acts 1989, ch. 6, § 3; 1990, ch. 1024, § 9; 1992, ch. 1027, § 2; 1996, ch. 1034, §§ 2, 3.

Code Commission Notes. Acts 1993, ch. 307, § 4 provided that the rule of the state human rights commission concerning sexual harassment be published as a permanent note under this chapter. This rule, which is presently printed as 29 CFR 1604.11, effective July 20, 1992, as amended by 64 FR 58333, 58334, Oct. 29, 1999, is as follows:

"§ 1604.11 Sexual Harassment.

"(a) Harassment on the basis of sex is a violation of section 703 of title VII. n1 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

"(1) The principles involved here continue to apply to race, color, religion or national origin.

"(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

"(c) [Reserved]

"(d) With respect to conduct between fellow

employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

"(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

"(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

"(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit."

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Law Reviews.

Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing, 46 U. Mem. L. Rev. 1009 (2016).

Political Correctness Askew: Excesses in the Pursuit of Minds and Manners (Kenneth Lasson), 63 Tenn. L. Rev. 689 (1996).

Revitalizing Urban Cities: Linking the Past to the Present, 46 U. Mem. L. Rev. 973 (2016).

Saving Our Cities: Land Banking in Tennessee, 46 U. Mem. L. Rev. 927 (2016).

What Part of "No" Don't You Understand?: Recent Developments in Workplace Sexual Harassment Law (William D. Evans Jr.), 36 No. 5 Tenn. B.J. 14 (2000).

Attorney General Opinions.

Effect of 1996 legislation regarding the executive director, OAG 97-090, 1997 Tenn. AG LEXIS 89 (5/30/97).

Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192, 1999 Tenn. AG LEXIS 206 (9/28/99).

NOTES TO DECISIONS

Analysis

1. Worksharing Agreement.
2. Limitations.

1. Worksharing Agreement.

The human rights commission has the right under Tennessee law to enter into a worksharing agreement with the EEOC for the purpose of effectively and efficiently enforcing Title VII, 42 U.S.C. § 2000e et seq.; the EEOC can thus, in certain situations defined by the worksharing agreement, become the "person designated" to investigate the matter pursuant to T.C.A. § 4-21-302(b). EEOC v. Dillard Dep't Stores, Inc., 768 F. Supp. 1247, 1991 U.S. Dist. LEXIS 11486 (W.D. Tenn. 1991).

By filing his charge with the state human rights commission, which, under a worksharing agreement between the agencies, acted as agent for the equal employment opportunity commission (EEOC), and vice versa, complainant simultaneously filed his charge with the EEOC. Brown v. Crowe, 963 F.2d 895, 1992 U.S. App. LEXIS 10196 (6th Cir. Tenn. 1992).

2. Limitations.

The doctrine of equitable tolling applied, where, through no fault of the plaintiff, procedural errors of the human rights commission would otherwise have defeated the plaintiff's right to litigate his case. Brown v. Crowe, 963 F.2d 895, 1992 U.S. App. LEXIS 10196 (6th Cir. Tenn. 1992).

4-21-203. Duties and responsibilities of the human rights commission to verify compliance with Title VI of the Civil Rights Act of 1964.

(a) In addition to the duties and responsibilities of the human rights commission pursuant to chapter 29 of this title, it is the responsibility of the human rights commission to verify that all state governmental entities comply

with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and regulations promulgated pursuant to Title VI.

(b) Notwithstanding any other law to the contrary, the human rights commission shall be responsible, pursuant to subsection (c), for the development of a Title VI implementation plan with participation by protected beneficiaries as may be required by that law or regulations for state governmental entities subject to the requirements of Title VI. To the extent applicable, the plan shall include Title VI implementation plans of any subrecipient of federal funds through a state entity. Each state governmental entity shall submit annual Title VI compliance reports and implementation plan updates to the human rights commission by October 1, 2010, and each October 1 thereafter. The reporting period shall cover the most recent full fiscal year. At least once each year, the human rights commission shall publish a cumulative report of its findings and recommendations concerning compliance with the requirements of this section. The cumulative annual report shall be distributed to the governor, to each member of the general assembly, and to each library designated as a depository of state reports and documents.

(c) It shall be the duty of the human rights commission to:

(1) Review current Title VI monitoring and enforcement procedures in federal and state statutes, rules, regulations, programs, services and budgetary priorities;

(2) Define and establish the components, guidelines and objectives of a comprehensive state policy to ensure and to promote present and future compliance with Title VI requirements;

(3) Identify any Tennessee laws, rules, programs, services and budgetary priorities that conflict with the components, guidelines and objectives of the comprehensive state policy;

(4) Search for any interdepartmental gaps, inconsistencies and inefficiencies in the implementation of the comprehensive state policy;

(5) Identify any new laws, rules, programs, services and budgetary priorities that are needed to ensure and promote present and future compliance with and enforcement of Title VI;

(6) Serve as the central coordinating agency for executive branch departments and agencies for technical assistance, consultation and resources to encourage and assist compliance with the requirements of Title VI;

(7) Periodically and systematically audit, review, evaluate and report on Title VI compliance efforts and outcomes for each executive branch department and agency;

(8) Conduct research, hold public hearings, publish reports and engage in other activities to inform Tennesseans of the provisions and requirements of Title VI;

(9) Investigate allegations of noncompliance with Title VI;

(10) Report annually to the governor and the general assembly concerning the commission's activities, findings and recommendations; and

(11) Engage in other activities to encourage, promote and assist compliance with the requirements of Title VI.

(d) Due to the diversity of programs that constitute federal financial assistance, subject to appropriations in the general appropriations act, the

human rights commission shall provide ongoing training, education and technical assistance to employees of each state department. The diversity training shall include, but not be limited to, health and social services, road maintenance and building, employment issues, housing and related issues, education and education related issues and administrative and administrative support functions. In addition, subject to appropriations in the general appropriations act, diversity training shall be extended to provide training to subrecipients of federal funds through the state general appropriations act, including local governments, nonprofit organizations and private businesses.

History.
Acts 2009, ch. 437, §§ 2-5.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

PART 3

VIOLATIONS — PROCEDURES

4-21-301. Discriminatory practices.

(a) It is a discriminatory practice for a person or for two (2) or more persons to:

(1) Retaliate or discriminate in any manner against a person because such person has opposed a practice declared discriminatory by this chapter or because such person has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter;

(2) Willfully interfere with the performance of a duty or the exercise of a power by the commission or one (1) of its members or representatives;

(3) Willfully obstruct or prevent a person from complying with this chapter or an order issued under this chapter; or

(4) Violate the terms of a conciliation agreement made pursuant to this chapter.

(b) No individual employee or agent of an employer shall be liable for any violation of part 4 of this chapter that any employer shall be found to have committed.

History.
Acts 1978, ch. 748, § 16; T.C.A., §§ 4-2114, 4-21-114; Acts 2014, ch. 995, § 1.

Law Reviews. Delimiting Title VII: Reverse Religious Discrimination and Proxy Claims in Employment Discrimination Litigation, 67 Vand. L. Rev. 239 (2014).

Compiler's Notes.
For the preamble to the act concerning employment litigation in Tennessee, please refer to Acts 2014, ch. 995.

Acts 2014, ch. 995, § 3 provided that the act shall apply to all actions accruing on or after July 1, 2014.

Acts 2014, ch. 995, § 7 provided that nothing in the act shall require the Tennessee human rights commission, created pursuant to § 4-21-201, to provide training or education in addition to its current operations.

Law Reviews.
Confusion over "Comparables": Will the Sixth Circuit Stick to One Standard with Respect to "Similarly Situated" Employees? (David L. Hudson Jr.), 37 No. 11 Tenn. B.J. 25 (2001).

Effects of the Sutton Trilogy, 68 Tenn. L. Rev. 705 (2001).

Employees' Assumption of Risk: Real or Illusory Choice?, 52 Tenn. L. Rev. 35 (1984).

Employment Law — Carr v. United Parcel

Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

FMLA Notice Requirements and the Chevron Test: Maintaining a Hard-Fought Balance, 55 Vand. L. Rev. 261 (2002).

Perceived Disabilities, Social Cognition, and "Innocent Mistakes," 55 Vand. L. Rev. 481 (2002).

Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine After Reeves v. Sanderson Plumbing Products, 55 Vand. L. Rev. 219 (2002).

The Faragher and Ellerth Problem: Lower Courts' Confusion Regarding the Definition of "Supervisor," 54 Vand. L. Rev. 123 (2001).

The Law at Work: Retaliation Claims: More Difficult Standards under Nassar and Ferguson, 49 Tenn. B.J. 32 (2013).

The Sins of Innocence in Standing Doctrine, 68 Vand. L. Rev. 297 (2015).

Viva state employment law! State law retaliation claims in a post-Crawford/Burlington Northern World (Alex B. Long), 77 Tenn. L. Rev. 253 (2010).

When Telling the Truth Costs You Your Job: Tennessee's Employment-at-Will Doctrine and the Need for Change (Chad E. Wallace), 39 No. 4 Tenn. B.J. 18 (2003).

Attorney General Opinions.

Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192, 1999 Tenn. AG LEXIS 206 (9/28/99).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Employment.
3. Retaliation Generally.
4. Retaliatory Discharge.
5. "Person" Defined.
6. Aiding and Abetting.
7. Compel or Command.
8. Willful Obstruction.
9. Elements of Claim.
10. Sufficiency of Evidence.
11. Damages.
12. Jury Instructions.
13. Bench Trial.
14. Jury Trial.

1. Constitutionality.

The procedural and enforcement provisions of this part do not violate the principle of separation of powers, the constitutional guarantee of the right to trial by jury or the constitutional provisions pertaining to the election of state judges. Plasti-Line, Inc. v. Tennessee Human Rights Com., 746 S.W.2d 691, 1988 Tenn. LEXIS 65 (Tenn. 1988).

2. Employment.

It is possible that some contractual right might accrue to an employee as the result of an unlawful termination of a contract of employment. Without a clear contract under which such rights may vest, however, employees in Tennessee possess no property right in their employment. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119, 1992 Tenn. LEXIS 204 (Tenn. 1992).

A contract of employment for a definite term may not be terminated before the end of the term, except for good cause or by mutual agreement, unless the right to do so is reserved in the contract. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119, 1992 Tenn. LEXIS 204 (Tenn. 1992).

This provision is integrally connected to the types of discrimination the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., has specifically forbidden, and marital status is not included in the list of forbidden employment classifications. Vaughn v. Lawrenceburg Power Sys., 269 F.3d 703, 2001 FED App. 375P, 2001 U.S. App. LEXIS 22508 (6th Cir. Tenn. 2001).

Although an employee established prima facie case of race and age discrimination as to one promotion the employee was not awarded, the employer had a legitimate reason, an agreement with a union, for placing another employee in the position, and the employee failed to show that the reason was pretextual, and as to other promotions, no prima facie case of discrimination was shown because the employee was not qualified for the positions in the first place. Anthony v. BTR Auto. Sealing Sys., 339 F.3d 506, 2003 FED App. 278P, 2003 U.S. App. LEXIS 16264 (6th Cir. Tenn. 2003).

Where an employee, a police officer suing a police department official, and others, under 42 U.S.C. § 1981, alleged she was disciplined and demoted in retaliation for her involvement in a discrimination lawsuit against her employer, and the official alleged that the employee was disciplined because of her failure to report having received a study guide — an unauthorized release of part of an exam given to employees seeking a promotion — but the official admitted that he knew of other officers who had committed the same conduct but were not disciplined, the employee put forth sufficient evidence of pretext to bring the question of the employer's motivation to the jury and the court denied the official summary judgment on the employee's claim under T.C.A. § 4-21-301. Ross v. City of Memphis, 394 F. Supp. 2d 1024, 2005 U.S. Dist. LEXIS 39321 (W.D. Tenn. 2005).

3. Retaliation Generally.

Police officers' subjective interpretation of their transfer and demotion did not prove that

the city manager's reason for the action, his belief that they could not work cohesively under the supervision of a new head of detectives, was pretextual. Miller v. City of Murfreesboro, 122 S.W.3d 766, 2003 Tenn. App. LEXIS 482 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 1269 (Tenn. 2003).

In a retaliation case, attorney fee award to plaintiff was proper under the Tennessee Human Rights Act, T.C.A. § 4-21-401 et seq., where the jury clearly found that plaintiff was retaliated against for complaining about sexual harassment. Emerson v. Oak Ridge Research, Inc., 187 S.W.3d 364, 2005 Tenn. App. LEXIS 637 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 224 (Tenn. 2006).

In this Age Discrimination in Employment Act of 1967 and Tennessee Human Rights Act action, the employee had shown a close enough temporal connection between her charge of discrimination and the beginning of the retaliatory conduct to permit a jury to make the inference that the employee's replacement's retaliatory actions were caused by the employee's complaints. Reed v. Am. Cellular, Inc., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 112163 (M.D. Tenn. Aug. 8, 2014).

Court of Appeals erred in reversing a trial court's denial of an employer's motion for a new trial and/or a remittitur because the jury could infer that a supervisor knew that an employee had filed a lawsuit for discrimination under federal and state laws based on the employee's Japanese-American heritage where the supervisor ordered the employee to do tasks that required physical labor beyond his medical restrictions less than a week after the employer was served with his lawsuit. Ferguson v. Middle Tenn. State Univ., 451 S.W.3d 375, 2014 Tenn. LEXIS 898 (Tenn. Oct. 29, 2014).

Sufficient evidence supported an employee's retaliation claim because the employee's direct evidence showed the employee was not promoted for having engaged in the protected activity of previously suing the employer for racial discrimination. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

Insufficient evidence supported an employee's retaliation claim based on a demotion because the employee did not show the employee was demoted for engaging in a protected activity, as (1) the employee's grievances unrelated to discrimination did not support such a claim, and (2) the employee did not show the employee's advocacy in favor of another employee who was retaliated against supported the claim. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

Summary judgment was improper on the former employee's unlawful retaliation claim as she alleged that the employer altered her work schedule, and that the managers knowingly allowed the harassment to continue by not stopping the supervisor from intimidating her. Phelps v. State, — S.W.3d —, 2021 Tenn. App. LEXIS 93 (Tenn. Ct. App. Mar. 10, 2021).

4. Retaliatory Discharge.

In order to establish a prima facie case of retaliatory discharge, plaintiff must prove: plaintiff engaged in a protected activity; the exercise of plaintiff's protected civil rights was known to defendant; defendant thereafter took an employment action adverse to plaintiff; and there was a causal connection between the protected activity and the adverse employment action. Newsom v. Textron Aerostructures, 924 S.W.2d 87, 1995 Tenn. App. LEXIS 681 (Tenn. Ct. App. 1995).

In an action alleging discharge in retaliation for plaintiff's filing an age discrimination lawsuit, where there was no evidence that created a factual dispute as to whether defendant's stated discharge grounds were merely a pretext for terminating defendant, grant of summary judgment was proper. Newsom v. Textron Aerostructures, 924 S.W.2d 87, 1995 Tenn. App. LEXIS 681 (Tenn. Ct. App. 1995).

Former employee's claim of retaliation based on race pursuant to Title VII of the Civil Rights Act of 1964, the Tennessee Human Rights Act, and 42 U.S.C. § 1981 failed because: (1) His former employer had a factual basis for termination since its investigation revealed evidence to support its conclusion the employee likely committed time card fraud; and (2), The employee had not come forth with any evidence that showed that the employer's belief that time card fraud had been committed did not motivate its decision to terminate him; thus, the employe did not show pretext for his termination. Crum v. Tyson Fresh Meats, 390 F. Supp. 2d 658, 2005 U.S. Dist. LEXIS 29804 (M.D. Tenn. 2005).

African-American former employee's claim of retaliatory discharge against his former employer under T.C.A. § 4-21-301 was dismissed because the employee failed to allege that he engaged in protected activity prior to his termination, or that there was a causal connection between his engagement in protected activity and his termination. Person v. Progressive Logistics Servs. LLC, 418 F. Supp. 2d 1006, 2006 U.S. Dist. LEXIS 12981 (E.D. Tenn. 2006).

Employee's altered working conditions were comparable to those at the hospital and in no way difficult or unpleasant; because the employee's transfer did not amount to an adverse employment action, the trial court did not err in dismissing the employee and her husband's retaliation claim. Frye v. St. Thomas Health Servs., 227 S.W.3d 595, 2007 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2007).

Year-long interval between plaintiff's complaint to the Equal Employment Opportunity

Commission and plaintiff's termination, coupled with the lack of other compelling evidence indicating retaliation, was an insufficient showing of causal connection to make out a prima facie case of retaliatory discharge under the Tennessee Human Rights Act, T.C.A. § 4-21-301 et seq. Tolliver v. Children's Home-Chambliss Shelter, 784 F. Supp. 2d 893, 2011 U.S. Dist. LEXIS 32553 (E.D. Tenn. Mar. 28, 2011).

Former employer's motion for summary judgment was granted in a former employee's suit for retaliation in violation of Title VII, 42 U.S.C. § 2000e-3(a), and the Tennessee Human Rights Act, T.C.A. § 4-21-301, because she failed to establish that she engaged in a protected activity and merely relied upon her quid pro quo sexual harassment claims, without additional evidence that she engaged in any protected participation or opposition activity. Nolan v. Indus. Sorting Servs., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 69808 (E.D. Tenn. May 18, 2012).

Trial court properly dismissed an employee's retaliation claim against a hospital under the Tennessee Human Rights Act because the evidence supported its findings that the vice-president was the ultimate decision-maker and that she was unaware that the employee participated in a human resource investigation of a supervisor when she decided to fire the employee; the vice-president and the employee testified that the employee never told the supervisor she participated in the investigation. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

Employee failed to establish a causal connection between her participation in the investigation of a supervisor and her termination because the record was replete with evidence of the employee's insubordination and refusal to perform her job requirements; the employee's belief that she was being retaliated against was not sufficient to establish causation, and the trial court was free to credit the testimony of the hospital's witnesses. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

Trial court did not commit reversible error in failing to include the totality of a human resources investigation of a supervisor and testimony concerning specific instances of conduct related to the investigation because the employee failed to establish that the vice-president knew that she participated in the investigation when the employee was terminated; therefore, the details of the report had very little, if any, relevance to the employee's Tennessee Human Rights Act claim. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

Because the trial court made findings that spanned eight pages of transcript concerning the causation element of the Tennessee Human Rights Act alone, the employee's contention that the trial court did not make sufficient findings to support its conclusion that she failed to establish that her termination was causally linked to her participation in the human resources investigation of a supervisor was without merit. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

5. "Person" Defined.

A state university fell within the definition of "person" for purposes of an action for retaliation under the Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Roberson v. University of Tenn., 912 S.W.2d 746, 1995 Tenn. App. LEXIS 558 (Tenn. Ct. App. 1995).

6. Aiding and Abetting.

An individual who aids, abets, incites, compels, or commands an employer to engage in employment-related discrimination has violated the Human Rights Act. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

A coworker, in the case of claims based on hostile work environment, could not be held individually liable for aiding and abetting an employer's violation in the absence of evidence that the coworker had any supervisory authority or encouraged the employer not to take corrective action. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

Supervisors, in the case of claims based on hostile work environment, could not be held individually liable for aiding and abetting an employer's violation in the absence of allegations that they encouraged or prevented the employer from taking corrective action. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

In the absence of allegations that supervisors utilized actual or apparent authority to obtain "sexual favors," claims against them were classified as supervisors failing to prevent the misconduct of a subordinate, and they could not be held individually liable as aiders and abettors

based on their mere failure to act. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

Trial court properly granted the employee's supervisor summary judgment on her discrimination claim under former T.C.A. § 4-21-301(2) [subsection deleted by 2014 amendment], because even though the supervisor denied most of the employee's allegations, he did not try to inhibit or impair the investigation and did not discourage or prevent the employer from taking remedial measures, as he accepted the sanctions that were imposed on him; the court declined to extend individual liability to supervisors who participated in the behavior creating the hostile work environment absent a showing that the supervisor's conduct encouraged the employer to engage in employment-related discrimination or prevented the employer from taking corrective action. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Because the hospital and other related persons and entities did not engage in any discriminatory conduct during the course of the employment of the employee, the trial court properly dismissed the employee and her husband's aiding and abetting claim. Frye v. St. Thomas Health Servs., 227 S.W.3d 595, 2007 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2007).

Teacher's aiding and abetting claim against a principal and a fellow teacher failed because there was no evidence of tortious conduct or that the principal and the fellow teacher knew of each other's conduct. Brown v. Bd. of Educ., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 128645 (W.D. Tenn. Sept. 15, 2014), aff'd, Brown v. Shelby Cty. Bd. of Educ., — F.3d —, — FED App. —, 2016 U.S. App. LEXIS 23870 (6th Cir. Tenn. Apr. 26, 2016).

In a civil rights lawsuit by a city parks department sergeant alleging claims for infringement of her constitutional rights and for discrimination and retaliation related to her sex, race, age, and sexual orientation, claims under the Tennessee Human Rights Act against individuals failed because the THRA only gives rise to individual liability for aiding and abetting claims. Desoto v. Bd. of Parks & Rec., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 165714 (M.D. Tenn. Nov. 25, 2014).

Even if the county employee was not deemed to have been plaintiff's employer, he could be found liable in his individual capacity if he were proven to have aided, abetted, incited, compelled or commanded a person to engage in a discriminatory act or practice; while plaintiff's complaint did not track this particular language, she did allege that he oversaw the creation and maintenance of a racially discriminatory hiring and promotion policy. Word v. Knox Cty., — S.W.3d —, 2020 Tenn. App. LEXIS 70 (Tenn. Ct. App. Feb. 20, 2020).

7. Compel or Command.

Employee failed to establish that the employee was compelled by employer to violate T.C.A. § 4-21-501 where the employee was instructed to play music in a hotel lounge that would induce black patrons to leave, since an establishment's music selection cannot serve as grounds for a discrimination action under this chapter. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

Because two employees did not allege that a regional manager either aided, abetted, incited, compelled, or commanded an employer to engage in any discriminatory act or practice, they did not state a claim against him under the Tennessee Human Rights Act; however, they stated a THRA claim against a district manager who had an employee's hours cut after the employee complained about harassment. Rhea v. Dollar Tree Stores, 395 F. Supp. 2d 696, 2005 U.S. Dist. LEXIS 36850 (W.D. Tenn. 2005).

8. Willful Obstruction.

T.C.A. § 4-21-301(4) (now 4-21-301(a)(3)) addresses the situation in which a "person's" conduct renders another's ability to comply with this chapter an impossibility. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

9. Elements of Claim.

Whether a retaliatory discharge claim is brought pursuant to title 4, chapter 21 or under federal law, a plaintiff must prove the same four elements: (1) That the plaintiff engaged in an activity protected by the statute; (2) That the defendant had knowledge of the plaintiff's exercise of protected activity; (3) That the defendant thereafter took an employment action adverse to the plaintiff; and (4) That a causal connection existed between the protected activity and the adverse employment action. Austin v. Shelby County Gov't, 3 S.W.3d 474, 1999 Tenn. App. LEXIS 128 (Tenn. Ct. App. 1999).

To make the determination of whether a causal link between an employee's protected activity and the adverse employment action exists, courts consider whether an employer's conduct can be linked to retaliatory intent, and temporal proximity of the adverse action to the complaint, a pattern of antagonism following a complaint, or other circumstantial evidence supporting causation are all relevant to a determination of causation; a majority of circuits have held that proof of close temporal proximity alone can establish causation, at least for purposes of stating a prima facie case, and the supreme court of Tennessee adopted the majority rule and held that close temporal proximity

of a complaint and a materially adverse action are sufficient to establish a prima facie case of causation. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Both the anti-discrimination and anti-retaliation provisions of Title VII of the Civil Rights Act of 1964 prohibit discrimination by an employer, because given the similarity of the prohibitions, if severe and pervasive harassment by a supervisor constitutes discrimination under the anti-discrimination statute, then it should also be sufficient to constitute discrimination under the anti-retaliation statute; because Faragher and Ellerth held that an employer is vicariously liable for a supervisor's violation of the anti-discrimination statute, an employer should also be vicariously liable for similar conduct when it violates the anti-retaliation statute, and therefore an employer may be held vicariously liable when the retaliation takes the form of severe and pervasive harassment by a supervisor. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

In order to state a prima facie case for retaliation under the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et. seq., an employee must demonstrate that: (1) She engaged in activity protected by the THRA; (2) The exercise of her protected rights was known to the defendant; (3) The defendant thereafter took a materially adverse action against her; and (4) There was a causal connection between the protected activity and the materially adverse action; the burden-shifting analysis that follows the establishment of a prima facie case remains unchanged by *White*. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Unsuccessful candidate for director of schools position failed to establish retaliation under 42 U.S.C. § 2000e-3(a) or T.C.A. § 4-21-301(1) (now 4-21-301(a)(1)) because, in complaining to a school board member, the candidate she pointed only to the fact that certain persons in the community did not like her and wanted revenge against her. Thus, she could not in good faith have believed that the Board's failure to hire her as director of schools was because she opposed gender discrimination. Battle v. Haywood County Bd. of Educ., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 117643 (W.D. Tenn. Oct. 12, 2011), aff'd, D App. 0780N, 488 Fed. Appx. 981, 2012 U.S. App. LEXIS 14952, 2012 FED App. 780N, 2012 FED App. 780N.

Employers were entitled to summary judgment on two discharged employees' claims under the Whistleblower Act because the employees could not prove an exclusive causal relationship between their whistleblowing activity relating to racial profiling and their discharge. Both employees admitted violations of the employer's cell phone and other employment policies. However, the evidence of close proximity between their complaints of racial profiling and their discharge supported their claim under the Tennessee Human Rights Act. Sykes v. Chattanooga Hous. Auth., 343 S.W.3d 18, 2011 Tenn. LEXIS 604 (Tenn. June 24, 2011).

Former employer's motion for summary judgment was denied in a former employee's suit for sex discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and the Tennessee Human Rights Act, T.C.A. § 4-21-301, because she produced sufficient evidence for a reasonable jury to find in her favor on her claims of quid pro quo sexual harassment by introducing evidence that the former employer did not have grounds to terminate her on the basis of absenteeism, presenting evidence that she was not terminated for the reasons given in her termination phone call, and she established a causal connection exists between her refusal to submit to alleged sexual overtures of her boss and the termination of her employment. Nolan v. Indus. Sorting Servs., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 69808 (E.D. Tenn. May 18, 2012).

In Title VII of the Civil Rights Act of 1964 and Tennessee Human Rights Act retaliation action, the judgment in favor of plaintiff was reversed because plaintiff failed to present material evidence at trial that the decisionmaker, his supervisor at the university, was aware of plaintiff's protected activity when she took the adverse job actions against plaintiff. Ferguson v. Middle Tenn. State Univ., — S.W.3d —, 2013 Tenn. App. LEXIS 221 (Tenn. Ct. App. Mar. 28, 2013), rev'd, 451 S.W.3d 375, 2014 Tenn. LEXIS 898 (Tenn. Oct. 29, 2014).

Employee failed to state a claim against the employer under the Tennessee Human Rights Act because the employee failed to show that he engaged in a protected activity or fell within a protected class, and the employee had not alleged a discriminatory practice by the employer in the complaint or that the employer retaliated or discriminated against him for opposing or interacting in any fashion with such a practice. Thurmer v. Charter Communs., LLC, — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 59713 (E.D. Tenn. Apr. 30, 2014).

In suit alleging discrimination based on sexual orientation, gender, race, and age, sergeant for city parks department failed to allege viable claim of age discrimination under ADEA or under Tennessee Human Rights Act, T.C.A. § 41-21-101 et seq., because department ultimately promoted employee who was older than sergeant, and allegation that department was grooming younger employee for lieutenant's position was conclusory, and in any event, standing alone, did not give rise to plausible inference of age discrimination. Desoto v. Bd. of

Parks & Rec., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 165714 (M.D. Tenn. Nov. 25, 2014).

Employee, who was terminated after she refused to delete work-related e-mails containing confidential client health care information that she had forwarded from her work computer to her personal account, did not engage in protected activity for purposes of a retaliation claim. Aldrich v. Rural Health Servs. Consortium, 579 Fed. Appx. 335, — F.3d —, 2014 U.S. App. LEXIS 15567, 2014 FED App. 625N (6th Cir. 2014).

Plaintiff making a retaliation claim under the Tennessee Human Rights Act (THRA) must establish that his or her protected activity was a but-for cause of an alleged adverse action by an employer because (1) "but-for" causation was required under Title VII, which the THRA mirrored, and the Tennessee Legislature intended the THRA to be coextensive with Title VII, and (2) the anti-retaliation provisions in Title VII and the THRA served the same purpose. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

Appellant participated in a protected activity when she reported a co-worker's use of racial slurs during a human resources investigation, and appellant was eventually fired, but the evidence supported the findings that the supervisor was the ultimate decision-maker and she was unaware that appellant participated in the investigation when the supervisor decided to fire appellant; the names of the participants in the investigation report had been redacted, and the supervisor testified that appellant never told her she participated in the investigation. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

Trial court incorporated its oral findings into its final order by reference and made findings spanning eight pages of transcript concerning the causation element alone, and thus appellant's claim of insufficient findings lacked merit. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

Appellant failed to establish, as was her burden, a causal connection between her participation in the investigation and the hospital's actions; the record was replete with evidence of her insubordination, her belief that she was being retaliated against was not sufficient to establish causation, and the hospital put on persuasive proof that appellant was terminated because she failed to cooperate and turn in weekly activity reports, among other things. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

10. Sufficiency of Evidence.

A single, isolated comment or belief that one member of management held several years prior to employee's layoff would probably be insufficient direct evidence of age discrimination. Jinks v. Alliedsignal, Inc., 250 F.3d 381, 2001 FED App. 159P, 2001 U.S. App. LEXIS 8958 (6th Cir. Tenn. 2001).

Without evidence that employee's work environment was subjectively hostile, employee failed to establish a prima facie case of hostile work environment based on race. Newman v. Fed. Express Corp., 266 F.3d 401, 2001 FED App. 344P, 2001 U.S. App. LEXIS 20988 (6th Cir. Tenn. 2001).

Trial court properly granted the employer summary judgment on the employee's retaliation claim under T.C.A. § 4-21-301(1) (now 4-21-301(a)(1)), because even though the employee presented sufficient evidence for a prima facie case of retaliation, the employer articulated a legitimate, non-discriminatory reason for the employee's transfer, which the employee failed to show was pretextual; the employer contended that it transferred the employee to protect her from further harassment by her supervisor, which was one of the central purposes of T.C.A. § 4-21-101(a)(1)-(4). Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Trial court properly granted the supervisor summary judgment on the employee's retaliation claim under T.C.A. § 4-21-301(1) (now 4-21-301(a)(1)), because the employee failed to present evidence satisfying the third prong of the retaliation test with regard to the email, press releases, and the supervisors statements to the employer's investigator; the main text of the email merely affirmed that the sexual harassment complaint would not impact the day-to-day operations of the university, the press release did not disclose the employee's identity or any information from which others could easily identify her and did not make any affirmative allegations against the employee, and the supervisor's allegations of inappropriate conduct by the employee were not materially adverse to her. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Employer was granted summary judgment as to the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et. seq., retaliation claim because general grievances which were not related to discrimination could not be the basis of a retaliation claim under the THRA. Payne v. Goodman Mfg. Co., L.P., 726 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 67191 (E.D. Tenn. July 6, 2010).

Cleaning tasks performed by plaintiff and other women did not rise to the level of material adverse employment actions, and thus were insufficient to support a prima facie case of discriminatory disparate treatment under the Tennessee Human Rights Act, T.C.A. § 4-21-301 et seq. Tolliver v. Children's Home-Cham-

bliss Shelter, 784 F. Supp. 2d 893, 2011 U.S. Dist. LEXIS 32553 (E.D. Tenn. Mar. 28, 2011).

Plaintiff's Tennessee Human Rights Act (THRA) retaliation claim failed where he did not present specific facts that would permit a jury to infer that the individuals in question knew about his filing of an Equal Employment Opportunity Commission charge. Further, discriminatory atmosphere evidence was irrelevant because it involved other, non-party employees and generally failed to show what, if any, materially adverse action plaintiff experienced. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

11. Damages.

Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., made no distinction between the remedies available for discrimination claims and retaliation claims as both were expressly placed into the category of discriminatory practices; thus, compensatory damages would be available for the employee's retaliation claim under state law. Baker v. Windsor Republic Doors, 635 F. Supp. 2d 765, 2009 U.S. Dist. LEXIS 61031 (W.D. Tenn. July 10, 2009).

12. Jury Instructions.

Jury instructions as to an employee's retaliation claim were proper as to causation, even though the instructions did not use the words "but for," because the instructions required an employee to demonstrate a "causal connection" between the employee's protected activity and an employer's denial of the employee's request for a promotion. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

13. Bench Trial.

Hospital sought a bench trial under the rule, which places no time limitation on a movant, claiming the a recent Tennessee Supreme Court decision indicated that appellant did not have the right to a jury trial in this retaliation case; appellant failed to cite to authority support the claim that the trial court should have declined to hear the motion because it was made on the eve of trial, plus under the professional conduct rule, an attorney was to be candid towards the tribunal and disclose dispositive legal authority. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

14. Jury Trial.

Trial court did not err in granting a hospital's motion for a nonjury trial because the employee was not entitled to a jury trial in her retaliation claim against under the Tennessee Human Rights Act. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

4-21-302. Complaints — Consideration by commission.

(a) A person claiming to be aggrieved by a discriminatory practice, or a member of the commission may file with the commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the commission to identify the persons charged, referred to in this part as the respondent. Within ten (10) days after receipt of the complaint, the commission shall serve on the complainant a notice acknowledging the filing of the complaint and informing the complainant of the respondent's time limits and choice of forums under this chapter.

(b) The commission staff, or a person designated pursuant to its rules, shall promptly investigate the matter to determine whether the discriminatory practice exists and shall within ten (10) days furnish the respondent with a copy of the complaint and a notice advising the respondent of the respondent's procedural rights and obligations under this chapter.

(c) The complaint must be filed within one hundred eighty (180) days after the commission of the alleged discriminatory practice.

(d)(1) The commission staff, or a person designated pursuant to its rules, shall commence an investigation of the complaint within thirty (30) days after the filing of the complaint. The commission staff, or designee, shall promptly investigate the matter to determine whether the discriminatory practice exists.

(2) If it is determined that there is no reasonable cause to believe that the

respondent has engaged in a discriminatory practice, the commission shall furnish a copy of the order to the complainant, the respondent, and such public officers and persons as the commission deems proper.

(e)(1) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order.

(2) Upon such application, the commission or an individual designated pursuant to its rules shall make a new determination within thirty (30) days whether there is reasonable cause to believe that the respondent has engaged in a discriminatory practice.

(3) If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the commission shall issue an order dismissing the complaint after reconsideration, and furnishing a copy of the order to the complainant, the respondent, and such public officers and persons as the commission deems proper.

History.

Acts 1978, ch. 748, § 17; T.C.A., §§ 4-2115, 4-21-115; Acts 1992, ch. 1027, §§ 3, 4.

Textbooks.

Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

Law Reviews.

Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

Attorney General Opinions.

The human rights commission has authority to process complaints alleging violations of T.C.A. § 4-21-904, which includes the authority to investigate such complaints under T.C.A. § 4-21-302; the commission is also authorized to review complaints filed with state agencies under T.C.A. § 4-21-905 to determine whether Title VI of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., is applicable, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

NOTES TO DECISIONS

Analysis

1. Employment Discrimination.
2. —Initiation of Proceedings.
3. —Statutes of Limitation.
4. Election of Remedies.
5. Person Designated to Investigate.

1. Employment Discrimination.

2. —Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency; and the third way to proceed is to file a direct action in the chancery court. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

3. —Statutes of Limitation.

An action alleging age discrimination in employment, which was filed as a direct action in the chancery court, was an action alleging in substance a federal civil rights statutory violation, and the statute of limitations in T.C.A. § 28-3-104 applied, rather than either the limitations in this section or the limitations in the federal act. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

T.C.A. § 28-3-104, the general statute of limitations for claims asserting a violation of federal civil rights, is applicable under T.C.A. § 4-21-311. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

Where plaintiff brought her claim by the administrative route set forth in this section, followed it through to the conciliation stage, and did not file a complaint in circuit court until after expiration of the limitations period under T.C.A. § 28-3-104, the court action was barred. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

The one year limitations period for bringing a

direct court action under T.C.A. § 4-21-311 was not tolled during the pendency of administrative charges filed with the Tennessee human rights commission. Burnett v. Tyco Corp., 932 F. Supp. 1039, 1996 U.S. Dist. LEXIS 10517 (W.D. Tenn. 1996).

4. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

5. Person Designated to Investigate.

The human rights commission has the right under Tennessee law to enter into a worksharing agreement with the EEOC for the purpose of effectively and efficiently enforcing Title VII; the EEOC can thus, in certain situations defined by the worksharing agreement, become the "person designated" to investigate the matter pursuant to T.C.A. § 4-21-302(b). EEOC v. Dillard Dep't Stores, Inc., 768 F. Supp. 1247, 1991 U.S. Dist. LEXIS 11486 (W.D. Tenn. 1991).

4-21-303. Conciliation agreements — Temporary relief.

(a) If the staff determines after investigation, or if the commission or its delegate determines after the review provided for in § 4-21-302 that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the commission staff shall endeavor to eliminate the alleged discriminatory practices by conference, conciliation and persuasion.

(b) The terms of a conciliation agreement reached with a respondent shall require the respondent to refrain from discriminatory practices in the future, and shall make such further provisions as may be agreed upon between the commission or its assigned staff and the respondent.

(c) If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, and such public officers and persons as the commission deems proper.

(d) Except for the terms of the conciliation agreement, neither the commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate discriminatory practice by conference, conciliation or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement. The conciliation agreement itself shall be made public unless the complainant and the respondent otherwise agree, and the commission also determines that disclosure is not required to further the purposes of this chapter.

(e) At the expiration of one (1) year from the date of a conciliation agreement, and at other times in its reasonable discretion, the commission staff may investigate whether the terms of the agreement have been and are being complied with by the respondent.

(f) Upon finding that the terms of the agreement are not being complied with by the respondent, the commission shall take such action as it deems appropriate to assure compliance.

(g) At any time after a complaint is filed, the commission may file an action in the chancery court or circuit court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has the respondent's principal place of business, seeking appropriate temporary relief

against the respondent, pending final determination of proceedings under the chapter, including an order or decree restraining such respondent from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court has the power to grant such temporary relief or restraining order as it deems just and proper.

History.
Acts 1978, ch. 748, § 18; T.C.A., §§ 4-2116, 4-21-116; Acts 1992, ch. 1027, § 5; 1996, ch. 777, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

4-21-304. Hearings.

(a)(1) In complaints involving discrimination in employment and public accommodations, within ninety (90) days after an administrative determination of reasonable cause to believe that discrimination took place, unless the commission has issued an order stating the terms of a conciliation agreement, or, in those cases in which the terms of a conciliation agreement have been kept confidential, has issued an order stating that the case has been satisfactorily conciliated, the commission shall serve on the respondent by mail or in person a written notice, together with a copy of the complaint as it may have been amended, or a copy of the letter of determination, requiring the respondent to answer the allegation of the complaint at a hearing before a hearing examiner or hearing examiners, or another individual pursuant to its rules, at a time and place specified by the hearing examiner or examiners after conference with the parties or their attorneys.

(2) A copy of the notice shall be furnished to the complainant, and such public officers and persons as the commission deems proper.

(3) In complaints involving housing discrimination only, if the commission has determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice, and if the complaint has not been resolved through a conciliation agreement, and if neither party has made an election for a civil action pursuant to § 4-21-312, then the commission shall commence a hearing in accordance with this subsection (a).

(4) All hearings conducted under this section shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5, part 3 of this title.

(b) A member of the commission who filed the complaint or endeavored to eliminate the alleged discriminatory practice by conference, conciliation or persuasion shall not participate in the hearing or in the subsequent deliberation of the commission.

(c) The respondent may file an answer with the commission by registered or certified mail in accordance with the rules of the commission before the hearing date. The respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the respondent has had an opportunity of a hearing on the complaint or amendment on which the order is based.

(d) A respondent, who has filed an answer or whose default in answering

has been set aside for good cause shown, may appear at the hearing with or without representation, may examine and cross-examine witnesses and the complainant, and may offer evidence.

(e) The complainant and the complainant's private attorney, and, in the discretion of the commission, any person, may intervene, examine, and cross-examine witnesses, and present evidence.

(f) If the respondent fails to answer the complaint, the commission may enter the respondent's default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(g) Efforts at conference, conciliation and persuasion shall not be received in evidence.

(h) Testimony taken at the hearing shall be under oath and transcribed. If the testimony is not taken before the commission, the record shall be transmitted to the commission.

(i) In a proceeding under this chapter, the production of a written, printed or visual communication, advertisement or other form of publication, or a written inquiry, or record, or other document purporting to have been made by a person shall be prima facie evidence that it was authorized by the person.

History.
Acts 1978, ch. 748, § 19; 1979, ch. 422, § 26; T.C.A., §§ 4-2117, 4-21-117; Acts 1992, ch. 1027, § 6; 2016, ch. 863, § 1.

Compiler's Notes.
Acts 2016, ch. 863, 3 provided that the act, which amended this section, shall apply to all actions accruing on or after April 19, 2016.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

Law Reviews.
The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

4-21-305. Findings and orders.

(a) If the commission determines that the respondent has not engaged in a discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, and such public officers and persons as the commission deems proper.

(b) If the commission determines that the respondent has engaged in a discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to such public officers and persons as the commission deems proper.

History.
Acts 1978, ch. 748, § 20; T.C.A., §§ 4-2118, 4-21-118.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

4-21-306. Remedies.

(a) Affirmative action ordered under this section may include, but is not limited to:

(1) Hiring, reinstatement or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;

(2) Admission or restoration of individuals to union membership, admission to, or participation in, a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;

(3) Admission of individuals to a place of public accommodation, resort or amusement;

(4) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;

(5) Reporting as to the manner of compliance;

(6) Posting notices in conspicuous places in the respondent's place of business in the form prescribed by the commission and inclusion of such notices in advertising material;

(7) Payment to the complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and cost, including a reasonable attorney's fee;

(8) Such other remedies as shall be necessary and proper to eliminate all the discrimination identified by the evidence submitted at the hearing or in the record; and

(9)(A) In cases involving discriminatory housing practices only, payment by the respondent of a civil penalty:

(i) In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior unlawful discriminatory housing practices;

(ii) In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one (1) other unlawful discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

(iii) In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed two (2) or more unlawful discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint;

(B) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting an unlawful discriminatory housing practice, then the civil penalties set forth in subdivisions (a)(9)(A)(ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(b) The commission may publish, or cause to be published, the names of

persons who have been determined to have engaged in a discriminatory practice.

History.
Acts 1978, ch. 748, §§ 21; T.C.A., §§ 4-2119, 4-21-119; Acts 1992, ch. 1027, § 7.

Cross-References.
Additional remedies preserved, § 4-21-311.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

Law Reviews.
Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Do State Fair Employment Statutes by "Negative Implication" Preclude Common-Law Wrongful Discharge Claims Based on the Public Policy Exception?, 21 Mem. St. U.L. Rev. 527 (1991).

Election of Remedies in Tennessee: Making the Right Choices (Steven W. Feldman), 37 No. 1 Tenn. B.J. 14 (2001).

Employment Law — Carr v. United Parcel Service: Individual Liability Under the Tennessee Human Rights Act, 29 U. Mem. L. Rev. 245 (1998).

NOTES TO DECISIONS

Analysis

1. Judicial Action.
2. Election of remedies.
3. Punitive Damages.
4. Attorney's Fees.
5. Relationship to Workers' Compensation Law.
6. Humiliation and Embarrassment Damages.
7. Future Pay.

1. Judicial Action.
Claimants who pursued a judicial action, like those who chose to pursue an administrative complaint, enjoyed the remedies enumerated in T.C.A. § 4-21-306. England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

Where a former employer regarded a former employee as having an impairment when he sought to return to work after implantation of a heart pacemaker and defibrillator, and where the employer would only permit the employee to return to work if he waived his right to any future workers' compensation based on his condition, the employee was properly awarded compensatory damages under the Americans with Disabilities Act, 42 U.S.C. § 12201(b), and the Tennessee Human Rights Act, T.C.A. § 4-21-306(a)(7). Baker v. Windsor Republic Doors, — F.3d —, 414 Fed. Appx. 764, 2011 FED App. 136N, 2011 U.S. App. LEXIS 4810 (6th Cir. Mar. 8, 2011).

2. Election of remedies.
The remedies provided under the Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., and the Open Meetings Act, T.C.A. § 8-44-106(a), are neither inconsistent nor repugnant and a plaintiff is not, therefore, compelled to elect between them. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 417, 1998 Tenn. LEXIS 209 (Tenn. 1998).

3. Punitive Damages.
If the general assembly intended punitive damages to be recoverable under this section, it would have specifically listed them, rather than inferred their availability through a "catch-all" residuary clause such as T.C.A. § 4-21-306(a)(8). England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

The remedies embodied in T.C.A. §§ 4-21-306 and 4-21-311 are exclusive, and exclude punitive damages. England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high burden of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741, 1995 U.S. Dist. LEXIS 12357 (M.D. Tenn. 1995).

Punitive damage awards are not available for employment discrimination and retaliation claims under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Thomas v. Allen-Stone Boxes, 925 F. Supp. 1316, 1995 U.S. Dist. LEXIS 21062 (W.D. Tenn. 1995).

Punitive damages were not recoverable under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., for an employment discrimination claim based on sexual discrimination. Beach v. Ingram & Assocs., 927 F. Supp. 255, 1996 U.S. Dist. LEXIS 7587 (M.D. Tenn. 1996).

Having read T.C.A. §§ 4-21-306 and 4-21-311 in pari materia, the court found that punitive damages are not available under T.C.A. § 4-21-306(a)(8); had the legislature intended punitive damages to be available under T.C.A. § 4-21-306(a)(8), it would have referred to punitive damages as a remedy in addition to those remedies described in T.C.A. § 4-21-306. Carver v. Citizen Utils. Co., 954 S.W.2d 34, 1997 Tenn. LEXIS 601 (Tenn. 1997).

Under the totality of the circumstances, the $100,000 awarded for humiliation, embarrassment, and emotional distress was not excessive and would not be disturbed. Watson v. Food Lion, Inc., 147 F. Supp. 2d 883, 2000 U.S. Dist. LEXIS 17385 (E.D. Tenn. 2000).

4. Attorney's Fees.

The plaintiff may qualify as the prevailing party so as to be entitled to attorney's fees even though the plaintiff does not prevail on all of the issues raised on appeal. Forbes v. Wilson County Emergency Dist. 911 Bd., 966 S.W.2d 417, 1998 Tenn. LEXIS 209 (Tenn. 1998).

In a retaliation case, attorney fee award to plaintiff was proper under the Tennessee Human Rights Act, T.C.A. § 4-21-401, where the jury clearly found that plaintiff was retaliated against for complaining about sexual harassment. Emerson v. Oak Ridge Research, Inc., 187 S.W.3d 364, 2005 Tenn. App. LEXIS 637 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 224 (Tenn. 2006).

From the billing records, the affidavits, and the employer's failure to object to the employee's fee request, there was every indication that the time spent by counsel was reasonable under the circumstances and that the hourly rate was reasonable as well; additionally, while the employee was not successful on every claim asserted in the complaint, the employee achieved excellent results, in that the jury found in her favor on the key issue in the case, that is, whether the employer discriminated against her through its policies. Therefore, the employee was awarded the requested amount of attorneys' fees. Stuart v. Metro. Gov't, 679 F. Supp. 2d 851, 2009 U.S. Dist. LEXIS 118620 (M.D. Tenn. Dec. 21, 2009).

5. Relationship to Workers' Compensation Law.

The Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., is the appropriate avenue of relief for employees who suffer injuries as a result of sexual harassment at work. Anderson v. Save-A-Lot, Ltd., 989 S.W.2d 277, 1999 Tenn. LEXIS 45 (Tenn. 1999), rehearing denied, — S.W.3d —, 1999 Tenn. LEXIS 110 (Tenn. Mar. 1, 1999).

6. Humiliation and Embarrassment Damages.

Remittitur of an employee's humiliation and embarrassment award for a discriminatory failure to promote was properly suggested because the employee did not show aggravating circumstances. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

7. Future Pay.

It was error to suggest remittitur as to an employee's award of future pay for a discriminatory failure to promote because the award was in line with evidence of (1) what the employee would have earned had the promotion not been denied, and (2) the length of time the employee planned to continue working. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

4-21-307. Judicial review.

(a) A complainant, respondent or intervenor aggrieved by an order of the commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the commission may obtain an order of the court for enforcement of its order, in a proceeding brought in the chancery court or circuit court in which the alleged discriminatory practice that is the subject of the order occurred or in which a respondent resides or transacts business.

(b)(1) The proceeding for review or enforcement is initiated by filing a petition in court.

(2) Copies of the appeal shall be served upon all parties of record.

(3) Within thirty (30) days after the service of the petition for appeal upon the commission or its filing by the commission, or within such further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of testimony, which need not be printed.

(4) By stipulation of all parties to the review proceeding, the record may be shortened.

(5) The findings of fact of the commission shall be conclusive unless clearly erroneous in view of the probative and substantial evidence on the whole record.

(6) The court has the power to grant such temporary relief or restraining order as it deems just and to enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or remanding the case to the commission for further proceedings.

(7) All such proceedings shall be heard and determined by the chancery court or circuit court and court of appeals as expeditiously as possible and with lawful precedence over other matters.

(c) If the commission has failed to schedule a hearing in accordance with § 4-21-304 or has failed to issue an order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent or an intervenor may petition the chancery court or circuit court in a county in which the alleged discriminatory practice set forth in the complaint occurs or in which the petitioner resides or has the petitioner's principal place of business for an order directing the commission to take such action. The court shall follow the procedure set forth in subsection (b) so far as applicable.

(d)(1) The court shall not consider any matter not considered by, nor any objection not raised before, the hearing examiner or examiners unless the failure of a party to present such matter to or raise such objection before the hearing examiner or examiners are excused because of good cause shown.

(2) A party may move the court to remand the case to the commission in the interest of justice for the purpose of adducing additional specified material evidence and seeking findings thereon; provided, that the party shows good cause for the failure to adduce such evidence before the commission.

(e)(1) The jurisdiction of the chancery court or circuit court shall be exclusive, and its final judgment or decree shall be subject to review by the court of appeals as provided by the Rules of Civil Procedure.

(2) The commission's copy of the testimony shall be available to all parties for examination without cost during business hours at the commission's office in Nashville.

(f)(1) A proceeding under this section must be initiated within thirty (30) days after a copy of the order of the commission is petitioned or the petition is filed under § 4-21-304.

(2) If no proceeding is so initiated, the commission may obtain a decree of the court of enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent and the respondent is subject to the jurisdiction of the court.

History.

Acts 1978, ch. 748, § 22; T.C.A., §§ 4-2120, 4-21-120; Acts 1996, ch. 777, §§ 2-5.

Textbooks.

Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

NOTES TO DECISIONS

Analysis

1. Employment Discrimination.
2. —Initiation of Proceedings.
3. Election of Remedies.

1. Employment Discrimination.

2. —Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency under T.C.A. § 4-21-307; and the third way to proceed is to file a direct action in the chancery court. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

3. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

City employee's Tennessee Human Rights Act claim was dismissed because the employee's election to obtain a final order from the Tennessee Human Rights Commission (THRC) on the merits prevented him from bringing an original action in any court, and the court lacked subject matter jurisdiction to review administrative orders of the THRC. Hullom v. City of Jackson, 620 F. Supp. 2d 895, 2009 U.S. Dist. LEXIS 53368 (W.D. Tenn. June 3, 2009).

4-21-308. Access to records.

(a) In connection with an investigation of a complaint filed under this chapter, the commission or its designated representative at any reasonable time may request access to premises, records and documents relevant to the complaint and the right to examine a photograph and copy evidence.

(b) Every person subject to this chapter shall:

(1) Make and keep records relevant to the determination of whether discriminatory practices have been or are being committed;

(2) Preserve such records for such periods; and

(3) Make such reports therefrom, as the commission shall prescribe by regulation or order, as reasonably necessary, or appropriate for the enforcement of this chapter or the regulation or orders thereunder.

(c) So as to avoid undue burdens on persons subject to this chapter, records and reports required by the commission under this section shall conform as near as may be to similar records and reports required by federal law and the laws of other states and to customary recordkeeping practice.

(d) If a person fails to permit access, examination, photographing or copying or fails to make, keep or preserve records or make reports in accordance with this section, the chancery court in Davidson county or the chancery court or circuit court for the county in which such person is found, resides, or has such person's principal place of business, upon application of the commission, may issue an order requiring compliance.

(e) The commission, by regulation, shall require each person subject to this chapter who controls an apprenticeship or other training program to keep all records reasonably necessary to carry out the purpose of the chapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and

shall furnish to the commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training programs.

(f) A person who believes that the application to it of a regulation or order issued under this section would result in undue hardship may apply to the commission for an exemption from the application of the regulation or order. If the commission finds the application of the regulation or order to the person in question would impose an undue hardship, the commission may grant appropriate relief.

History.
Acts 1978, ch. 748, § 23; T.C.A., §§ 4-2121, 4-21-121; Acts 1996, ch. 777, § 6; 2005, ch. 111, § 1.

4-21-309. Subpoenas.

(a)(1) Upon written application to the commission, a party to a proceeding is entitled as of right to the issuance of subpoenas for deposition or hearing in the name of the commission by an individual designated pursuant to its rules requiring attendance and the giving of testimony by witnesses and the production of documents.

(2) A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena is directed.

(3) On petition of the person to whom the subpoena is directed and notice to the requesting party, the commission or an individual designated pursuant to its rules may vacate or modify the subpoena.

(4) Depositions of witnesses may be taken as prescribed by the Tennessee Rules of Civil Procedure.

(5) Witnesses whose depositions are taken, or who are summoned before the commission or its agents, will be entitled to the same witness and mileage fees as are paid to the witnesses subpoenaed in chancery courts of the state.

(b) If a person fails to comply with a subpoena issued by the commission, the chancery court or circuit court of the county in which the person is found, resides, or has the person's principal place of business, upon application of the commission or the party requesting the subpoena, may issue an order requiring compliance. In any proceeding brought under this section, the court may modify or set aside the subpoena.

History.
Acts 1978, ch. 748, § 24; T.C.A., §§ 4-2122, 4-21-122; Acts 1996, ch. 777, § 7.

Cross-References.
Depositions, Tenn. R. Civ. P. Rules 30, 31, 32.
Witness compensation, title 24, ch. 4.

4-21-310. Resistance to, obstruction, etc., of commission.

Any person who willfully resists, prevents, impedes or interferes with the performance of a duty or the exercise of a power by the commission or one (1) of its members or representatives commits a Class C misdemeanor.

History.
Acts 1978, ch. 748, § 25; T.C.A., §§ 4-2123, 4-21-123; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

4-21-311. Additional remedies preserved — Civil Action — Allocations of burden of proof.

(a) Any person injured by any act in violation of this chapter shall have a civil cause of action in chancery court or circuit court.

(b) In such an action, the court may issue any permanent or temporary injunction, temporary restraining order, or any other order and may award to the plaintiff actual damages sustained by such plaintiff, together with the costs of the lawsuit, including a reasonable fee for the plaintiff's attorney of record, all of which shall be in addition to any other remedies contained in this chapter.

(c) In cases involving discriminatory housing practices, the court may award punitive damages to the plaintiff, in addition to the other relief specified in this section and this chapter. In addition to the remedies set forth in this section, all remedies described in § 4-21-306, except the civil penalty described in § 4-21-306(a)(9), shall be available in any lawsuit filed pursuant to this section.

(d) A civil cause of action under this section shall be filed in chancery court or circuit court within one (1) year after the alleged discriminatory practice ceases, and any such action shall supersede any complaint or hearing before the commission concerning the same alleged violations, and any such administrative action shall be closed upon such filing.

(e) In any civil cause of action alleging a violation of this chapter or of § 8-50-103, the plaintiff shall have the burden of establishing a prima facie case of intentional discrimination or retaliation. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one (1) or more legitimate, nondiscriminatory reasons existed for the challenged employment action. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination or retaliation raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the challenged employment action and that the stated reason was a pretext for illegal discrimination or retaliation. The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment. The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of intentional discrimination or retaliation.

History.

Acts 1978, ch. 748, § 26; T.C.A., §§ 4-2124, 4-21-124; Acts 1989, ch. 374, § 1; 1992, ch. 1027, § 8; 1996, ch. 777, §§ 8, 9; 2011, ch. 461, § 1.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Acts 2011, ch. 461, § 4 provided that the act, which added subsection (e), shall apply to all causes of action accruing on or after June 10, 2011.

Textbooks.

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Federal Pleading Standards: Webb and Veasy (Edward G. Phillips with Brandon L. Morrow), 49 Tenn. B.J. 26 (2013).

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1. Initiation of Proceedings.

Tennessee law provides three ways in which a victim of alleged employment discrimination may proceed; first of all, he may file administratively through the Tennessee human rights commission, which filing must be done within 180 days of the alleged discriminatory act; if the victim chooses the administrative route, the second way to proceed would follow the final decision of the commission, which would be to file a complaint with the chancery court to review the decision of the administrative agency; the third way to proceed is to file a direct action in the chancery court under this section. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

2. Administrative Review.

Administrative review is not a condition precedent to maintaining direct action in chancery court under T.C.A. § 4-21-311. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

3. Statutes of Limitation.

An action alleging age discrimination in employment that was filed as a direct action in the chancery court under this section, was an action alleging in substance a federal civil rights statutory violation, and the statute of limitations in T.C.A. § 28-3-104 applied, rather than either the limitations in T.C.A. § 4-21-302 or the general limitations in the federal act. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

Where the substance of the complaint alleges a federal civil rights statutory violation, Tennessee's general statute of limitations for actions brought in state courts, T.C.A. § 28-3-104, is applicable in the absence of a specific statute of limitation. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

T.C.A. § 28-3-104, the general statute of limitations for claims asserting a violation of federal civil rights, is applicable under this section. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

Where plaintiff brought her claim by the administrative route set forth in T.C.A. § 4-21-302, followed it through to the conciliation stage, and did not file a complaint in circuit court until after expiration of the limitations period, the court action was barred. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

Claimants who pursued a judicial action, like those who chose to pursue an administrative complaint, enjoyed the remedies enumerated in T.C.A. § 4-21-306. England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

The one year limitations period for bringing a direct court action under T.C.A. § 4-21-311 was not tolled during the pendency of administrative charges filed with the Tennessee Human Rights Commission. Burnett v. Tyco Corp., 932 F. Supp. 1039, 1996 U.S. Dist. LEXIS 10517 (W.D. Tenn. 1996).

The one-year limitations period for claims of discriminatory practice and retaliatory discharge commenced when plaintiff received oral notice of defendant's decision to terminate his contract, not from the date he was provided written notice of the decision in accordance with his employment agreement. Weber v. Moses, 938 S.W.2d 387, 1996 Tenn. LEXIS 810 (Tenn. 1996).

Application of the "continuing violation" theory was justified where plaintiff was able to show that a particular demotion that was within the limitations period was linked to a series of related discriminatory acts. Frazier v. Heritage Fed. Bank for Sav., 955 S.W.2d 633, 1997 Tenn. App. LEXIS 323 (Tenn. Ct. App. 1997).

Application of the "continuing violation" theory was justified where plaintiff was able to show that a particular demotion that was within the limitations period was linked to a series of related discriminatory acts. Frazier v. Heritage Fed. Bank for Sav., 955 S.W.2d 633, 1997 Tenn. App. LEXIS 323 (Tenn. Ct. App. 1997).

Promotion or hiring from an allegedly tainted promotions roster is not a "continuing act" for purposes of timely filing, but is merely the

effect of previous discrimination. Cox v. City of Memphis, 230 F.3d 199, 2000 FED App. 370P, 2000 U.S. App. LEXIS 25942 (6th Cir. Tenn. 2000).

Because plaintiff failed to show that any acts of sexual harassment occurred within one year prior to date of filing, the plaintiff's state law claims for quid pro quo and hostile environment sexual harassment under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., were barred by the statute of limitations; however, plaintiff's claim of retaliation did fall within the limits of the continuing violation doctrine. Reed v. Cracker Barrel Old Country Store, Inc., 133 F. Supp. 2d 1055, 2000 U.S. Dist. LEXIS 16302 (M.D. Tenn. 2000).

To the extent a former employee sought recovery of discrete retaliatory or discriminatory acts under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., that occurred more than one year from the filing of the complaint, those claims were barred by the applicable statute of limitations. Martin v. Boeing-Oak Ridge Co., 244 F. Supp. 2d 863, 2002 U.S. Dist. LEXIS 25654 (E.D. Tenn. 2002).

State supreme court answered a certified question and held that under T.C.A. § 4-21-311(d) a claim of discriminatory pay could be brought at any time within one year from the time that a plaintiff had received discriminatory pay and that backpay was available for the duration of the unequal pay. Booker v. Boeing Co., 188 S.W.3d 639, 2006 Tenn. LEXIS 311 (Tenn. 2006).

T.C.A. § 4-21-311(d) barred the applicant's age-discrimination claim that stemmed from his unsuccessful application to be a chemical operator because the company's failure-to-hire decision was a discrete act; the applicant could not get any purchase from the continuing-violation doctrine. Cline v. BWXT Y-12, LLC, 521 F.3d 507, 2008 FED App. 133P, 2008 U.S. App. LEXIS 6829 (6th Cir. Apr. 1, 2008).

Employee's claims under the Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., were time-barred; any alleged discriminatory action ceased as of the date of the employee's termination, March 23, 2006, and therefore her complaint filed more than two years later on June 25, 2008, came too late. Gibson-Holmes v. Fifth Third Bank, 661 F. Supp. 2d 905, 2009 U.S. Dist. LEXIS 92155 (M.D. Tenn. Oct. 2, 2009).

Employee's demotion claim under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., was time barred because the alleged discriminatory actions occurred prior to the date on which the statute of limitations began to run were discrete acts. Conner v. City of Jackson, 669 F. Supp. 2d 886, 2009 U.S. Dist. LEXIS 112545 (W.D. Tenn. June 9, 2009).

Former employees' intentional infliction of emotional distress (IIED) claim was time-barred under the one-year limitations period of T.C.A. § 4-21-311(d) because they were terminated more than one year before filing the complaint, which did not allege any IIED injury following the dates of their terminations. Fite v. Nashville, 686 F. Supp. 2d 735, 2010 U.S. Dist. LEXIS 14860 (M.D. Tenn. Feb. 19, 2010).

Employee's race discrimination claims concerning denials of promotions were time-barred under T.C.A. § 4-21-311(d) because the employee's complaint was filed more than one year after the last alleged discriminatory act occurred; the doctrine of continuing violations did not apply because no alleged discriminatory conduct occurred within the one year limitations period. Nicholson v. City of Clarksville, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 115307 (M.D. Tenn. Oct. 5, 2011).

In light of the fact that the focus for statute of limitations purposes was on the time of the discriminatory action, not the time at which the consequences of the action were most painful, the employee's Tennessee Human Rights Act claims against the employer were barred by the one-year statute of limitations because the alleged retaliation and failure to take remedial action occurred more than one year before the complaint was filed. Thurmer v. Charter Communs., LLC, — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 59713 (E.D. Tenn. Apr. 30, 2014).

Finding a drawing in the men's restroom at work was the kind of isolated, discrete discriminatory practice that was time-barred by the Tennessee Human Rights Act (THRA) where plaintiff informed management about the drawing, it was removed, and he did not connect this one act to any present discriminatory activity or show that the drawing was part of a longstanding and demonstrable policy of racial discrimination by defendant. Thus, this incident could not be used as a factual allegation underlying plaintiff's hostile work environment claim. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

Employee's Tennessee Human Rights Act claim related to December 2012 position was time barred because it was filed after a year from the allegedly discriminatory practice. Clemons v. Metro. Gov't of Nashville & Davidson Cnty., — F. Supp. 2d —, 2016 U.S. Dist. LEXIS 15019 (M.D. Tenn. Feb. 8, 2016), aff'd, 664 Fed. Appx. 544, 2016 U.S. App. LEXIS 21581 (6th Cir. Tenn. Dec. 1, 2016).

4. Election of Remedies.

The anti-discrimination act forces an election between the administrative and judicial remedy, at least where an aggrieved individual has initiated the administrative process and pursued it to an administrative conclusion; once the administrative process has been pursued

past the initial administrative conclusion that no actionable violation exists, the only way to get to court is through an administrative appeal. Puckett v. Tennessee Eastman Co., 889 F.2d 1481, 1989 U.S. App. LEXIS 16584 (6th Cir. Tenn. 1989).

5. Right to Jury Trial.

A jury may try the factual issues in a case brought in chancery court under this section despite the fact that the general assembly did not specify in the Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., whether a jury could be demanded. Hannah v. Pitney Bowes, Inc., 739 F. Supp. 1131, 1989 U.S. Dist. LEXIS 17129 (E.D. Tenn. 1989).

Actual damages mean compensatory damages under this section and are not limited to equitable relief; moreover, T.C.A. § 21-1-103 allows a party to invoke a broad right to a jury trial, even in many cases of an equitable nature, and the plaintiff has properly made such a demand in this case. Hannah v. Pitney Bowes, Inc., 739 F. Supp. 1131, 1989 U.S. Dist. LEXIS 17129 (E.D. Tenn. 1989).

Tennessee Human Rights Act (THRA) claims against municipalities have to be tried in a bench trial because: (1) the Tennessee Governmental Tort Liability Act (GTLA) applies to suits against governmental entities unless the act specifically provides otherwise or is only applicable to governmental entities and provides its own remedy; (2) the THRA provides for suits to be brought in either chancery or circuit court but is silent as to whether claims have to be tried with or without a jury and whether the choice of venue provision specifically applies to claims against governmental entities in contravention of the GTLA; and (3) the GTLA provides that suits have to be brought in the circuit court without a jury. Sneed v. City of Red Bank, — S.W.3d —, 2013 Tenn. App. LEXIS 426 (Tenn. Ct. App. June 27, 2013), rev'd, 459 S.W.3d 17, 2014 Tenn. LEXIS 962 (Tenn. Dec. 2, 2014).

6. Burden of Proof.

Appellant failed to establish, as was her burden, a causal connection between her participation in the investigation and the hospital's actions; the record was replete with evidence of her insubordination, her belief that she was being retaliated against was not sufficient to establish causation, and the hospital put on persuasive proof that appellant was terminated because she failed to cooperate and turn in weekly activity reports, among other things. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., 572 S.W.3d 324, 2018 Tenn. App. LEXIS 372 (2018).

In a case in which plaintiff sued a county board of education on the grounds of age discrimination and retaliation, the appellate court concluded that plaintiff identified and produced evidence to establish a prima facie case for both claims and to create a genuine issue of fact concerning whether the board's stated reasons for its actions were pretexts for discriminatory or retaliatory animus. Because facts material to the board's defense were disputed and a trier of fact could find that the reasons for lateral transferring plaintiff from a bookkeeping position to a teacher's aid position were pretextual, summary dismissal was not appropriate. Templeton v. Macon Cty., 576 S.W.3d 691, 2018 Tenn. App. LEXIS 694 (Tenn. Ct. App. Nov. 29, 2018).

Plaintiffs, not the union, had the burden of proving intentional discrimination or retaliation. Bailey v. U.S.F. Holland, Inc., — S.W.3d —, 2020 Tenn. App. LEXIS 422 (Tenn. Ct. App. Sept. 18, 2020).

7. Evidence Insufficient.

Regarding the race discrimination claim under Title VII of the Civil Rights Act of 1964 and the Tennessee Human Rights Act, there was insufficient evidence from which the jury could conclude that giving a white employee an unremarkable $1.00 raise upon becoming a full-time employee somehow reflected racial animus by the employer against the employee in choosing to deny her a 50% raise. Hawkins v. Ctr. for Spinal Surgery, — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 103400 (M.D. Tenn. July 29, 2014).

Trial court properly dismissed an employee's retaliation claim against a hospital under the Tennessee Human Rights Act because the evidence supported its findings that the vice-president was the ultimate decision-maker and that she was unaware that the employee participated in a human resource investigation of a supervisor when she decided to fire the employee; the vice-president and the employee testified that the employee never told the supervisor she participated in the investigation. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

Employee failed to establish a causal connection between her participation in the investigation of a supervisor and her termination because the record was replete with evidence of the employee's insubordination and refusal to perform her job requirements; the employee's belief that she was being retaliated against was not sufficient to establish causation, and the trial court was free to credit the testimony of the hospital's witnesses. Terry v. Jackson-Madison Cty. Gen. Hosp. Dist., — S.W.3d —, 2018 Tenn. App. LEXIS 372 (Tenn. Ct. App. June 28, 2018).

8. Summary Judgment Proper.

Trial court did not err by granting the former employer summary judgment on the former employee's claim alleging discrimination because there was no genuine dispute that, due to her medical restrictions, the employee was un-

able to perform the essential job functions of a store manager, as she admitted that she could not perform the essential job function of frequent and proper lifting of up to 40 pounds and occasional lifting of up to 55 pounds. Hilliard v. Dolgencorp, LLC, — S.W.3d —, 2019 Tenn. App. LEXIS 150 (Tenn. Ct. App. Mar. 26, 2019).

9. "Actual Damages."

The term "actual damages" as used in T.C.A. § 4-21-311 does not include compensatory damages for injuries, including emotional injuries such as "serious embarrassment and humiliation." Belcher v. Sears, Roebuck & Co., 686 F. Supp. 671, 1988 U.S. Dist. LEXIS 6003 (M.D. Tenn. 1988), superseded by statute as stated in, England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

10. Compensatory Damages.

Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., made no distinction between the remedies available for discrimination claims and retaliation claims as both were expressly placed into the category of discriminatory practices; thus, compensatory damages would be available for the employee's retaliation claim under state law. Baker v. Windsor Republic Doors, 635 F. Supp. 2d 765, 2009 U.S. Dist. LEXIS 61031 (W.D. Tenn. July 10, 2009).

11. Punitive Damages.

The remedies embodied in T.C.A. § 4-21-306 and this section are exclusive, and exclude punitive damages, except in such cases for which such damages are expressly authorized. England v. Fleetguard, Inc., 878 F. Supp. 1058, 1995 U.S. Dist. LEXIS 3048 (M.D. Tenn. 1995).

The Tennessee Court of Appeals does recognize punitive damages, albeit with a high burden of proof on the plaintiff. Wilkinson v. Sally Beauty Co., 896 F. Supp. 741, 1995 U.S. Dist. LEXIS 12357 (M.D. Tenn. 1995).

Punitive damage awards are not available for employment discrimination and retaliation claims under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq. Thomas v. Allen-Stone Boxes, 925 F. Supp. 1316, 1995 U.S. Dist. LEXIS 21062 (W.D. Tenn. 1995).

Punitive damages were not recoverable under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., for an employment discrimination claim based on sexual discrimination. Beach v. Ingram & Assocs., 927 F. Supp. 255, 1996 U.S. Dist. LEXIS 7587 (M.D. Tenn. 1996).

Having read T.C.A. §§ 4-21-306 and 4-21-311 in pari materia, the court found that punitive damages are not available under T.C.A. § 4-21-306(a)(8); had the legislature intended punitive damages to be available under T.C.A. § 4-21-306(a)(8), it would have referred to punitive damages as a remedy in addition to those remedies described in T.C.A. § 4-21-306. Carver v. Citizen Utils. Co., 954 S.W.2d 34, 1997 Tenn. LEXIS 601 (Tenn. 1997).

12. Attorney Fees.

Attorney fees provided for in this section are for the attorney and are not a windfall damage award to the plaintiff; thus, a client did not have a cause of action based on her attorney's failure to maintain time records in connection with a discrimination action. Wood v. Parker, 901 S.W.2d 374, 1995 Tenn. App. LEXIS 71 (Tenn. Ct. App. 1995).

4-21-312. Election of civil action.

(a) This section applies only in cases involving discriminatory housing practices.

(b) If the commission has determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice and if the complaint has not been resolved through a conciliation agreement, the commission shall notify the complainant and the respondent in writing that they may elect to have the claims and issues of the complaint decided in a civil action commenced and maintained by the commission. Either the complainant or the respondent may make such an election by notifying the commission of the complainant's or respondent's desire to do so. A party shall make an election for a civil action no later than twenty (20) days after receiving notice of permission to do so.

(c) If an election is made under this section, no later than sixty (60) days after the election is made, the commission shall commence a civil action in the chancery court or circuit court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has the respondent's principal place of business.

(d) In a civil action brought under this section, the court may grant relief as

it deems appropriate, including any permanent or temporary injunction, temporary restraining order, or other equitable relief, and may award to any person compensatory and punitive damages. Parties to a civil action brought pursuant to this section shall have the right to a jury trial.

History.
Acts 1992, ch. 1027, § 9; 1996, ch. 777, § 10; 2016, ch. 863, § 2.

Compiler's Notes.
Acts 2016, ch. 863, 3 provided that the act, which amended this section, shall apply to all actions accruing on or after April 19, 2016.

4-21-313. Limitations on compensatory damage amounts — Exclusions from application of limits.

(a) For any cause of action arising under § 4-21-401, § 8-50-103, or § 50-1-304, the sum of the amount of compensatory damages awarded for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, shall not exceed, for each complaining party:

(1) In the case of a cause of action arising under § 50-1-304 and an employer who has less than eight (8) employees at the time the cause of action arose, twenty-five thousand dollars ($25,000);

(2) In the case of an employer who has eight (8) or more but fewer than fifteen (15) employees at the time the cause of action arose, twenty-five thousand dollars ($25,000);

(3) In the case of an employer who has more than fourteen (14) and fewer than one hundred one (101) employees at the time the cause of action arose, fifty thousand dollars ($50,000);

(4) In the case of an employer who has more than one hundred (100) and fewer than two hundred one (201) employees at the time the cause of action arose, one hundred thousand dollars ($100,000);

(5) In the case of an employer who has more than two hundred (200) and fewer than five hundred one (501) employees at the time the cause of action arose, two hundred thousand dollars ($200,000); and

(6) In the case of an employer who has more than five hundred (500) employees at the time the cause of action arose, three hundred thousand dollars ($300,000).

(b) The limitations in subsection (a) shall not apply to backpay, interest on backpay, front pay, or any equitable relief.

(c) The court shall not inform a jury of the limitations in subsection (a), but the court shall conform any judgment to comply with the limitations.

(d) For the purpose of determining when the cause of action arose under subsection (a), the court shall determine the number of employees employed by the employer on the date when the adverse employment action giving rise to the employee's claim occurred.

History.
Acts 2014, ch. 995, § 2; 2016, ch. 593, § 1.

Compiler's Notes.
For the preamble to the act concerning em-

ployment litigation in Tennessee, please refer to Acts 2014, ch. 995.

Acts 2014, ch. 995, § 3 provided that the act shall apply to all actions accruing on or after July 1, 2014.

Acts 2014, ch. 995, § 7 provided that nothing in the act shall require the Tennessee human rights commission, created pursuant to § 4-21-201, to provide training or education in addition to its current operations.

Acts 2016, ch. 593, § 2 provided that the act, which amended this section, shall apply to causes of action accruing on or after March 10, 2016.

4-21-314. Simultaneous action in state and federal courts concerning common nucleus of operative facts prohibited.

No employee may concurrently maintain any cause of action in state court under § 4-21-401, § 8-50-103, or § 50-1-304, while at the same time prosecuting an action in federal court based on a common nucleus of operative facts. Upon motion of the employer, the state court shall dismiss any action maintained under § 4-21-401, § 8-50-103, or § 50-1-304, in which the employee is concurrently prosecuting an action based on a common nucleus of operative facts in federal court.

History.

Acts 2014, ch. 995, § 2.

Compiler's Notes.

For the preamble to the act concerning employment litigation in Tennessee, please refer to Acts 2014, ch. 995.

Acts 2014, ch. 995, § 3 provided that the act shall apply to all actions accruing on or after July 1, 2014.

Acts 2014, ch. 995, 7 provided that nothing in the act shall require the Tennessee human rights commission, created pursuant to § 4-21-201, to provide training or education in addition to its current operations.

PART 4

EMPLOYMENT-RELATED DISCRIMINATION

4-21-401. Employer practices.

(a) It is a discriminatory practice for an employer to:

(1) Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin; or

(2) Limit, segregate or classify an employee or applicants for employment in any way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee, because of race, creed, color, religion, sex, age or national origin.

(b) This section does not apply to the employment of an individual by such individual's parent, spouse or child or to employment in the domestic service of the employer.

(c) It is not a discriminatory practice for an employer to institute a policy in the employer's workplace requiring that all employees speak only in English at certain times when the employer has a legitimate business necessity for such a policy, including, but not limited to, the safe and efficient operation of the employer's business, and the employer provides notice to employees of the policy and the consequences of violating the policy.

(d)(1) No employer shall terminate an employee who is a volunteer rescue squad worker, as this term is defined in § 7-51-210, because the employee,

when acting as a volunteer rescue squad worker, is absent or late to the employee's employment in order to respond to an emergency prior to the time the employee is to report to the employee's place of employment.

(2) An employer may charge against the employee's regular pay any time that an employee who is a volunteer rescue squad worker loses from employment because of the employee's response to an emergency.

(3) An employer has the right to request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer rescue squad worker stating that the employee responded to an emergency and list the time and date of the emergency.

(4) Any employee who is absent or late to the employee's employment in order to respond to an emergency shall make a reasonable effort to notify the employee's employer that the employee may be absent or late.

(5) Any employee terminated in violation of this section may bring a civil action against the employee's employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. The employee has one (1) year from the date of a violation of this section to file an action.

History.

Acts 1978, ch. 748, § 7; T.C.A., § 4-2105; Acts 1980, ch. 732, § 6; T.C.A., § 4-21-105; Acts 2010, ch. 1089, § 1.

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NOTES TO DECISIONS

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1. Sufficiency of Complaint.

Complaint of former employee in a wrongful termination action that she was subjected to "various forms and degrees of discrimination and harassment by the Executive Director and other employees" failed to allege any specific discriminatory acts or conduct on the basis of any of the factors in T.C.A. § 4-21-401. Johnson v. South Cent. Human Resource Agency, 926 S.W.2d 951, 1996 Tenn. App. LEXIS 42 (Tenn. Ct. App. 1996).

Where an African-American former employee alleged that he was qualified for his job, that he performed satisfactorily, that he was terminated based on his race, and that he was replaced by a person outside his protected class, the employee sufficiently alleged a prima facie case of race discrimination under 42 U.S.C. § 1981 and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Person v. Progressive Logistics Servs. LLC, 418 F. Supp. 2d 1006, 2006 U.S. Dist. LEXIS 12981 (E.D. Tenn. 2006).

City employee's Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., claim was dismissed because the employee's election to obtain a final order from the Tennessee Human Rights Commission (THRC) on the merits prevented him from bringing an original action in any court, and the court lacked subject matter jurisdiction to review administrative orders of the THRC. Hullom v. City of Jackson, 620 F. Supp. 2d 895, 2009 U.S. Dist. LEXIS 53368 (W.D. Tenn. June 3, 2009).

Plaintiff alleged enough to assert claims for violation of the Tennessee Human Rights Act, hostile work environment, disparate treatment, retaliation, protected activity, and constructive discharge; plaintiff claimed that the county and county employee were motivated by race in their hiring practices and in actions taken against plaintiff, including disciplining and threatening her because of her race and because she had protested racially discriminatory practices. Word v. Knox Cty., — S.W.3d —, 2020 Tenn. App. LEXIS 70 (Tenn. Ct. App. Feb. 20, 2020).

2. Limitations.

T.C.A. §§ 4-21-101 and 4-21-401 are an integral part of the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., and a plaintiff who filed a complaint against her former employer charging sex discrimination under these sections was subject to the one-year limitations period for an action brought under the federal civil rights statutes, as provided in T.C.A. § 28-3-104. Bennett v. Steiner-Liff Iron & Metal Co., 826 S.W.2d 119, 1992 Tenn. LEXIS 204 (Tenn. 1992).

In an action for sexual harassment, the continuing violation doctrine, which allows a plaintiff to challenge an ongoing series of discriminatory acts in their entirety, would have applied if one of the discriminatory acts fell within the limitations period of T.C.A. § 28-3-104. Spicer v. Beaman Bottling Co., 937 S.W.2d 884, 1996 Tenn. LEXIS 696 (Tenn. 1996), overruled in part, Booker v. Boeing Co., 188 S.W.3d 639, 2006 Tenn. LEXIS 311 (Tenn. 2006).

3. Effect of Sovereign Immunity.

Pregnancy discrimination may be established by using either the direct method where a plaintiff may present enough evidence to demonstrate that the adverse employment action was the result of intentional discrimination; and the indirect method in which a plaintiff establishes a prima facie case of pregnancy discrimination by showing: (1) That she was pregnant; (2) That she was qualified for her job; (3) That she was subjected to an adverse employment decision; and (4) That there is a nexus between her pregnancy and the adverse employment decision by demonstrating that comparable non-pregnant employee received more favoarable treatment. Spann v. Abraham, 36 S.W.3d 452, 1999 Tenn. App. LEXIS 746 (Tenn. Ct. App. 1999).

Motion to dismiss was granted where a state community college was a state agency, an employee's § 1981 claim was barred by the Eleventh Amendment; the state was immune to suits in federal court for Tennessee Human Rights Act, T.C.A. 4-21-101 et seq., violations and this claim was barred as well. Henderson v. Southwest Tenn. Cmty. College, 282 F. Supp. 2d 804, 2003 U.S. Dist. LEXIS 16161 (W.D. Tenn. 2003).

4. Burden of Proof.

If the plaintiff establishes a prima facie case of sex discrimination, the burden shifts to the defendant to show the action was taken for a

legitimate, nondiscriminatory reason and the plaintiff must then show the alleged legitimate reason was only a pretext to the discriminatory animus behind the action. Raines v. Shoney's, Inc., 909 F. Supp. 1070, 1995 U.S. Dist. LEXIS 19145 (E.D. Tenn. 1995).

Summary judgment was properly granted in favor of university on professor's lawsuit alleging that university discriminated against him on the basis of national origin and religion where professor could not show that denial of his application for promotion was discriminatory because he could not show that he was qualified for such a promotion; record was insufficient to establish a genuine issue of material fact as to whether denial of release time from professor's teaching responsibilities was discriminatory. Marpaka v. Hefner, 289 S.W.3d 308, 2008 Tenn. App. LEXIS 605 (Tenn. Ct. App. Oct. 3, 2008).

Because plaintiff employee presented evidence of the discriminatory race animus of defendant's personnel director and offered sufficient proof under the cat's paw rule to create genuine issues of fact as to intent and causation, such evidence was to be imputed to defendant employer on plaintiff's claim under Title VII and the Tennessee Human Rights Act. Thus, summary judgment on his claims was improper. Chattman v. Toho Tenax Am., Inc., 2012 FED App. 0217P, 686 F.3d 339, 2012 U.S. App. LEXIS 14359 (6th Cir. July 13, 2012).

It was undisputed that a final written warning made an employee of defendant employer ineligible for promotions or raises for a one-year period, and that before he was disciplined, plaintiff employee was eligible to be promoted. After the discipline, he was ineligible, and while it was disputed whether plaintiff would have received a promotion during that one-year period but for the warning, the relevant analysis was simply whether the terms of his employment adversely changed, and since they had, plaintiff established an adverse employment action for purposes of his prima facie case of race discrimination. Chattman v. Toho Tenax Am., Inc., 2012 FED App. 0217P, 686 F.3d 339, 2012 U.S. App. LEXIS 14359 (6th Cir. July 13, 2012).

Because two decision makers should have known, by the time they finished their investigation into a horseplay incident, that the white employee involved, at best, was exaggerating the severity of the horseplay and his injuries, and such knowledge eliminated the differentiating or mitigating circumstances that would distinguish plaintiff African-American employee's conduct from that of other others engaged in horseplay, plaintiff created a genuine dispute of material fact as to whether other similarly situated white employees were also similarly disciplined for engaging in horseplay. Chattman v. Toho Tenax Am., Inc., 2012 FED App. 0217P, 686 F.3d 339, 2012 U.S. App. LEXIS 14359 (6th Cir. July 13, 2012).

Once the plaintiff proves his prima facie case of age discrimination, the burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the employee's discharge. If the employer meets the burden of articulation, then the burden shifts back to the plaintiff to prove by a preponderance of the evidence that the reason proffered by the employer was not its true reason but merely a pretext for discrimination. Cooley v. Carmike Cinemas, 25 F.3d 1325, 1994 FED App. 208P, 1994 U.S. App. LEXIS 14473 (6th Cir. 1994).

Employer offered several reasons for not reappointing the employee to the position of head basketball coach, none of which were based on ageist or retaliatory motives; those reasons included the employee's performance during the previous basketball season, as well as his performance evaluation for the previous year. The employee did not come forward with evidence to show that the employer's reasons were pretextual; thus, the employee failed to satisfy his burden of proof of demonstrating age discrimination under 29 U.S.C. § 623(a), and the Tennessee Human Rights Act, T.C.A. § 4-21-401(a), or retaliation under 42 U.S.C. § 1981. Harris v. Metro. Gov't of Nashville And Davidson County, 594 F.3d 476, 2010 FED App. 25P, 2010 U.S. App. LEXIS 2442 (6th Cir. Feb. 5, 2010).

Because plaintiff employee firefighter failed to show he had qualifications similar to those whites (with limited physical capabilities), and did not establish the nature and extent of their injuries, what jobs were created for them, or how those jobs differed from his light-duty work, the employee's discrimination claims against defendant city employer under 42 U.S.C. § 2000e-2(a)(1) and T.C.A. § 4-21-401(a)(1) failed. Jones v. City of Franklin, 468 Fed. Appx. 557, — F.3d —, 2012 U.S. App. LEXIS 6495, 2012 FED App. 343N (6th Cir.) (6th Cir. Tenn. 2012).

5. Title VII Analysis.

Tennessee Human Rights Act (THRA) claims are analyzed in the same manner as Title VII claims. Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, & GMC Trucks, Inc., 173 F.3d 988, 1999 FED App. 128P, 1999 U.S. App. LEXIS 6098 (6th Cir. Tenn. 1999).

In a case in which a female applicant for a firefighter position appealed a chancery court's dismissal of her Tennessee Human Rights Act complaint against a city, in which she alleged that the physical agility exam for firefighters had a disparate impact on females, the three-part burden-shifting test from Title VII applied to determine whether an unlawful disparate impact existed in the physical agility exam. Hayes v. City of Lexington, 334 S.W.3d 207, 2009 Tenn. App. LEXIS 758 (Tenn. Ct. App.

Nov. 12, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 541 (Tenn. May 20, 2010).

6. Affirmative Defense.

An employer defending a claim of vicarious liability for actionable hostile work environment sexual harassment may raise an affirmative defense to liability or damages when no tangible employment action has been taken. Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999).

An affirmative defense against actionable hostile work environment sexual harassment is comprised of two necessary elements: (1) That the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) That the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or that the employee unreasonably failed to otherwise avoid the harm. Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999).

Because defendant employer successfully set forth an affirmative defense to plaintiff's Equal Pay Act, 29 U.S.C. § 206, claim, the employer had also set forth an affirmative defense to plaintiff's wage discrimination claim under the Tennessee Human Rights Act. Day v. Krystal Co., 471 F. Supp. 2d 874, 2007 U.S. Dist. LEXIS 5596 (E.D. Tenn. 2007).

7. Individual Liability.

The "agent of an employer" language in the definition of "employer" in T.C.A. § 4-21-102 does not impose individual liability. Carr v. UPS, 955 S.W.2d 832, 1997 Tenn. LEXIS 511 (Tenn. 1997), overruled in part, Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999), overruled in part, Reagan v. City of Knoxville, 692 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 11616 (E.D. Tenn. 2010).

8. Corporate Parent's Liability.

Expression of legislative intent under T.C.A. § 4-21-401(a)(1) is not clear enough to justify applying decisional law under Title VII of the Civil Rights of 1964, 42 U.S.C. § 2000e, in the place of well-established Tennessee case doctrine setting forth the standards of determining a corporate parent's liability for the alleged discriminatory employment acts of its subsidiary. Davis v. Connecticut General Life Ins. Co., 743 F. Supp. 1282, 1990 U.S. Dist. LEXIS 10667 (M.D. Tenn. 1990).

9. State Liability.

State judge's actions, if proven to constitute quid pro quo sexual harassment of county employee under the judge's supervision, could be imputed to the state, since it empowered the judge with the authority allegedly abused in an attempt to gain sexual favors. Sanders v. Lanier, 968 S.W.2d 787, 1998 Tenn. LEXIS 95 (Tenn. 1998).

10. Remedies.

Plaintiff who sought front pay at trial for unlawful age-based discharge made an election of remedies; consequently, having made that election and having lost that issue before the jury, he was not allowed to seek reinstatement on appeal. Flynn v. Shoney's, Inc., 850 S.W.2d 458, 1992 Tenn. App. LEXIS 883 (Tenn. Ct. App. 1992), rehearing denied, — S.W.2d —, 1992 Tenn. App. LEXIS 960 (Tenn. Ct. App. Dec. 2, 1992).

Tennessee Human Rights Act (THRA), T.C.A. § 4-21-101 et seq., made no distinction between the remedies available for discrimination claims and retaliation claims as both were expressly placed into the category of discriminatory practices; thus, compensatory damages would be available for the employee's retaliation claim under state law. Baker v. Windsor Republic Doors, 635 F. Supp. 2d 765, 2009 U.S. Dist. LEXIS 61031 (W.D. Tenn. July 10, 2009).

11. Age Discrimination.

The standard for proving age discrimination was that the plaintiff must prove age was a determining factor in the employer's decision to terminate the plaintiff. Bruce v. Western Auto Supply Co., 669 S.W.2d 95, 1984 Tenn. App. LEXIS 2871 (Tenn. Ct. App. 1984).

Once an age discrimination plaintiff has established a prima facie case, the burden of proof shifts to the employer to rebut the presumption of discrimination by articulating a legitimate nondiscriminatory reason for the employment decision. Loeffler v. Kjellgren, 884 S.W.2d 463, 1994 Tenn. App. LEXIS 270 (Tenn. Ct. App. 1994).

T.C.A. § 50-7-304(k) applied retroactively to facts arising before its passage, and, thus, precluded employer's claim that employee was collaterally estopped from bringing an age discrimination action on the basis that her claim for unemployment compensation was denied because of a finding that she was discharged for insubordination. Mangrum v. Wal-Mart Stores, 950 S.W.2d 33, 1997 Tenn. App. LEXIS 51 (Tenn. Ct. App. 1997).

Even though plaintiff's salary was not reduced, constant reduction in her duties and prestige were "material adverse changes" in her conditions of employment sufficient to support a finding of age and sex discrimination. Frazier v. Heritage Fed. Bank for Sav., 955 S.W.2d 633, 1997 Tenn. App. LEXIS 323 (Tenn. Ct. App. 1997).

Trial court did not err in granting a city's motion for summary judgment where Tennessee's mandatory retirement statute, T.C.A. § 8-36-205, permits it to adopt a mandatory retirement age of 62 without proving that age is a bona fide occupational qualification (BFOQ) for firefighters; although no such reference was

made to the prohibition against age discrimination in the Tennessee Human Rights Act, T.C.A. § 4-21-401 et seq., clearly, the legislature intended to create an express exception to the Tennessee statute prohibiting age discrimination. Goodman v. City of Savannah, 148 S.W.3d 88, 2003 Tenn. App. LEXIS 788 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2004 Tenn. LEXIS 444 (Tenn. May 10, 2004).

Trial court erred in summarily dismissing an employee's age discrimination suit under T.C.A. § 4-21-401 as he responded to the employer's summary judgment motion with evidence challenging the credibility of his supervisor, upon whom the employer's defense was based; as such, the employer's defense was at issue. Frame v. Davidson Transit Org., 194 S.W.3d 429, 2005 Tenn. App. LEXIS 562 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 213 (Tenn. 2006).

Hospital and other related persons and entities admitted that the employee's job responsibilities were altered as a result of her transfer, however the record clearly showed that employee's responsibilities were comparable, if not of greater importance, to those at the hospital; the employee's preference for a position at the hospital at the controllership level doing special projects was simply insufficient to create an age discrimination claim under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., since it was well established that a purely subjective preference for one position over another would not suffice. Frye v. St. Thomas Health Servs., 227 S.W.3d 595, 2007 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2007).

Motion for summary judgment was denied because employee provided enough evidence of pretext such that a reasonable jury could determine that the employee would not have been constructively discharged but for his age. Essentially, a jury could conclude that the employer's actions in giving the employee two final warnings were motivated by age-based animus rather than valid performance reasons. Cross v. Sbarro Am., Inc., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 15484 (E.D. Tenn. Feb. 15, 2011).

In this Age Discrimination in Employment Act of 1967 and Tennessee Human Rights Act action, considering the evidence the employee presented regarding the manager's poor treatment of her, as well as the evidence of discriminatory remarks, the employee presented sufficient circumstantial evidence of age discrimination to permit a jury to find the employer's proffered reason for her demotion was pretext and that she would not have been demoted but for her age. Reed v. Am. Cellular, Inc., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 112163 (M.D. Tenn. Aug. 8, 2014).

In this Age Discrimination in Employment Act of 1967 and Tennessee Human Rights Act action, the employee presented direct evidence of discrimination where the manager had significant influence over decision to demote the employee, the manager's remarks were related to that decision because they expressed her desire to get rid of the employee because of her age, and the manager's remarks were not isolated or ambiguous, but repeated and blatantly discriminatory. Reed v. Am. Cellular, Inc., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 112163 (M.D. Tenn. Aug. 8, 2014).

Trial court erred by granting the employer summary judgment in the employee's age and disability discrimination action because there were genuine issues of material fact as to whether the asserted reasons for the employee's termination were pretextual. In his deposition the employer's president confirmed that the employer had no problems with him at the time, an undisputed fact stated that most instances of delayed payments were attributable to the president's specific instruction to delay payment when cash flow was slow, and the date at which the employer learned of the employee's prior conviction was disputed. Schede v. Anthony & Gordon Constr. Co., — S.W.3d —, 2018 Tenn. App. LEXIS 175 (Tenn. Ct. App. Apr. 5, 2018).

Former employee of the State of Tennessee, Department of Correction, could not establish that age was a determining factor in the employee's termination or in the Department's failure to hire the employee during a reduction in force because one of two available positions was filled with someone older than the employee. Thompson v. State, — S.W.3d —, 2020 Tenn. App. LEXIS 135 (Tenn. Ct. App. Mar. 31, 2020).

12. Sex Discrimination.

There was material evidence that defendant discriminated against plaintiff on the basis of sex, and retaliated against her for filing an equal employment opportunity commission charge. Roberson v. University of Tennessee, 829 S.W.2d 149, 1992 Tenn. App. LEXIS 36 (Tenn. Ct. App. 1992).

Employer was entitled to summary judgment on employees's sex discrimination claim where the employee failed to: (1) Produce evidence rebutting employer's stated reason for creating a new supervisory position for a man hired in anticipation of employee's maternity leave; and (2) Indicate different treatment because of gender. Frizzell v. Southwest Motor Freight, 154 F.3d 641, 1998 FED App. 285P, 1998 U.S. App. LEXIS 22015 (6th Cir. Tenn. 1998).

Under the Tennessee Human Rights Act, compiled in T.C.A. § 4-21-101 et seq., an employer is subject to vicarious liability where an employee is victimized by hostile work environment sexual harassment committed by a supervisor with immediate (or successively higher) authority over the employee. Parker v. Warren County Util. Dist., 2 S.W.3d 170, 1999 Tenn. LEXIS 419 (Tenn. 1999).

In a retaliation case, attorney fee award to plaintiff was proper under the Tennessee Human Rights Act, T.C.A. § 4-21-401 et. seq., where the jury clearly found that plaintiff was retaliated against for complaining about sexual harassment. Emerson v. Oak Ridge Research, Inc., 187 S.W.3d 364, 2005 Tenn. App. LEXIS 637 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 224 (Tenn. 2006).

Female employee terminated due to her mistakes on her CEO's health benefit plan was not similarly situated under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., to a male who made mistakes on the CEO's salary because the CEO was the termination decision maker and his decision was based upon the female employee's interaction with his wife and not with him. Day v. Krystal Co., 471 F. Supp. 2d 874, 2007 U.S. Dist. LEXIS 5596 (E.D. Tenn. 2007).

Terminated employee's evidence merely showed she expressed a general interest in being promoted to a human resource manager position, and such a showing was not enough to meet the application requirement for her failure to promote discrimination claim; while her supervisor's comment was indicative of a possible rejection of her application if she applied, this isolated comment was not enough to excuse the application requirement. Day v. Krystal Co., 471 F. Supp. 2d 874, 2007 U.S. Dist. LEXIS 5596 (E.D. Tenn. 2007).

Employer was granted summary judgment as to equal pay sex discrimination Tennessee Human Rights Act claim because the employee was unable to establish that her job requirements and duties were the same as her comparators. Payne v. Goodman Mfg. Co., L.P., 726 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 67191 (E.D. Tenn. July 6, 2010).

Union member who claimed that he had been subjected to derogatory comments and threatened because of his homosexuality failed to state a discrimination claim under T.C.A. § 4-21-401, which did not prohibit discrimination on the basis of sexual orientation. The member did not claim to have been discriminated against based on his appearance or mannerisms or for gender non-conformity, so he did not state a claim for sex-stereotyping discrimination. Gilbert v. Country Music Ass'n, 2011 FED App. 0532N, 432 Fed. Appx. 516, 2011 U.S. App. LEXIS 15933, 2011 FED App. 532N (6th Cir. Tenn. 2011).

13. Racial Discrimination.

A white employee who was discharged because the employee's child was biracial was discriminated against on the basis of race, even though the root animus of the discrimination was a prejudice against the biracial child. Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, & GMC Trucks, Inc., 173 F.3d 988, 1999 FED App. 128P, 1999 U.S. App. LEXIS 6098 (6th Cir. Tenn. 1999).

Employee's disparate treatment claim survived summary judgment where the employee presented evidence of two other white female employees in similar positions with performance issues who were treated substantially different from the employee; the two white employees were not terminated until more than a year after the plaintiff employee was terminated, and the two white employees were not similarly disciplined. McNeail-Tunstall v. Marsh USA, 307 F. Supp. 2d 955, 2004 U.S. Dist. LEXIS 3661 (W.D. Tenn. 2004).

Former employee's claims of racial discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., failed because: (1) The employee admitted that no one at the employer ever made negative references to his race during any of the employment decisions at issue, nor were any such statement made during his termination meeting; (2) He admitted that neither his direct supervisor nor the supervisor's boss ever made negative statements about his race, or African Americans in general; (3) He admitted that he was unaware of any statements from co-employees that would indicate race discrimination played a part in employment decisions that occurred before his termination; and (4), He identified no one who was treated differently than he for committing time card fraud because the employer was consistent in its practice of terminating employees that committed time card fraud. Crum v. Tyson Fresh Meats, 390 F. Supp. 2d 658, 2005 U.S. Dist. LEXIS 29804 (M.D. Tenn. 2005).

Employee did not establish a failure to promote in violation of the Tennessee Human Rights Act, T.C.A. § 4-21-401 et. seq., because a contemplated department restructuring, with a new supervisory position, did not occur, and thus, there was no promotion position, the employee did not apply for a promotion, and he was not denied a promotion due to his race. Chattman v. Toho Tenax Am., Inc., 686 F. Supp. 2d 754, 2010 U.S. Dist. LEXIS 15486 (E.D. Tenn. Feb. 22, 2010).

Even if an employee had established a failure to promote in violation of the Tennessee Human Rights Act, T.C.A. § 4-21-401 et seq., the employer provided a legitimate nondiscriminatory reason for its action, which the employee was unable to rebut, because a contemplated department restructuring, with a new supervisory position, did not occur, and thus, there was no promotion position, the employee did not apply for a promotion, and he was not denied a promotion due to his race. Chattman v. Toho Tenax Am., Inc., 686 F. Supp. 2d 754, 2010 U.S. Dist. LEXIS 15486 (E.D. Tenn. Feb. 22, 2010).

Employer was granted summary judgment on the employee's race discrimination claim under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., where: (1) Conclusory and

subjective beliefs, devoid of factual support, were not enough to create a genuine issue of material fact regarding background circumstances; (2) The employee could not show that she was treated differently than a similarly-situated, non-protected employee; and (3) The employer cited the employee's poor performance and poor leadership at the times at issue in this case as the basis for the employee's termination from employment Treadwell v. Am. Airlines, Inc., 716 F. Supp. 2d 721, 2010 U.S. Dist. LEXIS 63932 (W.D. Tenn. June 9, 2010), aff'd, 447 Fed. Appx. 676, 2011 U.S. App. LEXIS 23348, 2011 FED App. 774N (6th) Cir. Tenn. 2011).

Because plaintiff employee presented a genuine dispute of material fact as to whether employees outside his protected class were not disciplined even though they engaged in similar horseplay to that which defendant employer contended motivated its discipline of plaintiff, plaintiff presented a genuine dispute over whether defendant's proffered justification was pretext for racial discrimination. Chattman v. Toho Tenax Am., Inc., 2012 FED App. 0217P, 686 F.3d 339, 2012 U.S. App. LEXIS 14359 (6th Cir. July 13, 2012).

On claims of racial discrimination under Title VII and under the Tennessee Human Rights Act (THRA), defendant set forth a legitimate non-discriminatory reason for promoting another candidate, based in part on her evaluation scores and seniority. Opinions of plaintiff's co-workers who had no direct involvement in the decision-making process, without more, did not create a genuine issue of material fact as to whether plaintiff was the superior candidate. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

Employer was not entitled to judgment as a matter of law as to an employee's disparate treatment claim of a failure to promote due to racial discrimination because a reasonable jury could conclude the white employee who took the position in question was promoted, rather than merely being transferred. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

14. Hostile Environment Claims.

Even though the employee was subjected to the "cold-shoulder" treatment because of her race or gender and such discriminatory conduct resulted in a hostile work environment, because the evidence did not show that the employer failed to take prompt and appropriate remedial action, finding in favor of employer was warranted. Campbell v. Florida Steel Corp., 919 S.W.2d 26, 1996 Tenn. LEXIS 148 (Tenn. 1996).

To prevail on a hostile work environment claim in a sexual harassment case, an employee must assert and prove that: (1) The employee is a member of a protected class; (2) The employee was subjected to unwelcome sexual harassment; (3) The harassment occurred because of the employee's gender; (4) The harassment affected a term, condition or privilege of employment; and (5) The employer knew, or should have known, of the harassment and failed to respond with prompt and appropriate corrective action. Davis v. Modine Mfg. Co., 979 S.W.2d 602, 1998 Tenn. App. LEXIS 44 (Tenn. Ct. App. 1998), review or rehearing denied, — S.W.3d —, 1998 Tenn. LEXIS 644 (Tenn. 1998).

While an employee claimed a hostile work environment, none of the alleged incidents of harassment were race-based, and the employee failed to create a genuine issue of material fact as to whether e-mails and conversations regarding the employee's work performance were objectively hostile and abuse so as to alter the terms, conditions, or privileges of the job; rather, the e-mails and conversations represented a continual documentation of errors made by the employee, and while the language of the e-mails could have been more delicate, insulting language was not sufficient to support a hostile work environment claim. McNeail-Tunstall v. Marsh USA, 307 F. Supp. 2d 955, 2004 U.S. Dist. LEXIS 3661 (W.D. Tenn. 2004).

Terminated employee's evidence was not severe or pervasive enough to create a hostile work environment where it amounted to six comments made over a period of six and a half years; although the employee found the comments to be inappropriate and unprofessional, the comments were not frequent, did not involve physically threatening or humiliating conduct, and most of the comments were not directed towards her. Day v. Krystal Co., 471 F. Supp. 2d 874, 2007 U.S. Dist. LEXIS 5596 (E.D. Tenn. 2007).

Even though the *Faragher/Ellerth* affirmative defense was not affected by the supervisor's status as a proxy or alter ego of the employer, genuine issues of material fact existed regarding whether the employer established that defense, and therefore the trial court erred by granting the employer summary judgment on that ground on the employee's discrimination claim; because the supervisor was the final arbiter regarding sexual harassment complaints and the employer's policy failed to provide a method of removing him from the decision-making process in which he was the alleged harasser, a reasonable jury could conclude the complaint procedures were unreasonable as applied to the employee. Allen v. McPhee, 240 S.W.3d 803, 2007 Tenn. LEXIS 1073 (Tenn. Dec. 4, 2007).

Nothing in the record established that the supervisor treated age-protected employees any differently than non-protected employees, but rather the testimony clearly showed that the supervisor was an equal opportunity oppressor, using supervisor's intense, dominant, abrupt, rude, and hard-nosed management style on all the hospital's employees; thus, there was no evidence of discriminatory conduct, and accordingly the trial court properly granted the hospital's and related persons' and entities' motion for summary judgment on the employee and her husband's hostile work environment claim. Frye v. St. Thomas Health Servs., 227 S.W.3d 595, 2007 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2007).

Allegations that a supervisor groped himself in front of three female employees, rubbed up against them, and made repeated sexual remarks and gestures stated a prima facie case for sexual harassment that survived a motion for summary judgment, particularly in light of the fact the employer was not entitled to a Faragher/Ellerth defense. Nesbitt v. Wilkins Tipton, P.A., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 115407 (M.D. Tenn. Aug. 16, 2012).

Isolated racial comments made by a supervisor, while offensive, were insufficient to create a hostile work environment; the incidents amount to mere offensive utterances that were not actionable. Nesbitt v. Wilkins Tipton, P.A., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 115407 (M.D. Tenn. Aug. 16, 2012).

Plaintiff employee firefighter's hostile-work-environment claim against defendant city employer failed as an anonymous "KKK" carving on a bathroom was an isolated incident and it did not alter the conditions of his employment and create an abusive working environment, and further, the city immediately removed the carving after it was reported. Jones v. City of Franklin, 468 Fed. Appx. 557, — F.3d —, 2012 U.S. App. LEXIS 6495, 2012 FED App. 343N (6th Cir.) (6th Cir. Tenn. 2012).

Hostile work environment claim survived summary judgment because supervisor's conduct and comments to employee regarding her uniform were gender-based and employee had shown evidence she was target of repeated physical and daily verbal harassment by department supervisor. Mocic v. Sumner County Emergency Med. Servs., 929 F. Supp. 2d 790, 2013 U.S. Dist. LEXIS 31742 (M.D. Tenn. Mar. 7, 2013).

Finding a drawing in the men's restroom at work was the kind of isolated, discrete discriminatory practice that was time-barred by the Tennessee Human Rights Act (THRA) where plaintiff informed management about the drawing, it was removed, and he did not connect this one act to any present discriminatory activity or show that the drawing was part of a longstanding and demonstrable policy of racial discrimination by defendant. Thus, this incident could not be used as a factual allegation underlying plaintiff's hostile work environment claim. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

Plaintiff's Tennessee Human Rights Act (THRA) racially hostile work environment claim failed, as he did not show that the alleged harassment was severe or pervasive. While a rubber chicken hanging from a noose was offensive, it was never seen again after it was taken down, and other behavior did not rise to the level of conduct that was physically threatening or humiliating. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

Summary judgment was improper on the former employee's Tennessee Human Rights Act discrimination and sexual harassment claims based on a hostile work environment because, even if the harassment occurred off-premises and after traditional work hours, the employee was sexually assaulted by a supervisor at an after-party that the employee testified was a continuation of the employee-sponsored party, and which employees were pressured to attend; and there was a genuine dispute as to whether the employer knew that the supervisor had sexually abused women at work prior to the party. Phelps v. State, — S.W.3d —, 2021 Tenn. App. LEXIS 93 (Tenn. Ct. App. Mar. 10, 2021).

15. Pregnancy Discrimination.

Tennessee courts may appropriately look to decisions of federal courts construing Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., when analyzing pregnancy discrimination claims. Spann v. Abraham, 36 S.W.3d 452, 1999 Tenn. App. LEXIS 746 (Tenn. Ct. App. 1999).

Employer was granted summary judgment as to the Tennessee Human Rights Act, T.C.A. 4-21-101 et seq., pregnancy discrimination claim because the temporal relationship between the employer's knowledge of the employee's pregnancy and the adverse employment action was not sufficient to warrant an inference of retaliation; the employer knew the employee was pregnant for nearly six months before it decided to terminate her employment. Payne v. Goodman Mfg. Co., L.P., 726 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 67191 (E.D. Tenn. July 6, 2010).

Employee's gender and pregnancy discrimination claims were dismissed because she failed to establish a prima facie case, given that she was replaced by a woman, and she was

unable to establish any nexus between her pregnancy and adverse employment actions taken against her. Sherman v. CBRE Grp., Inc., — F. Supp. 2d —, 2016 U.S. Dist. LEXIS 14231 (M.D. Tenn. Feb. 5, 2016).

16. Retaliation.

Employee's retaliation claim succeeded based on the employer's knowledge of the employee's filing of two Equal Employment Opportunity Commission (EEOC) claims and temporal proximity to the employee's termination of employment less than two months from the first filing of an EEOC complaint and within two weeks of the second EEOC complaint. McNeail-Tunstall v. Marsh USA, 307 F. Supp. 2d 955, 2004 U.S. Dist. LEXIS 3661 (W.D. Tenn. 2004).

Defendant city employer's decision not to create a permanent light-duty position for plaintiff employee firefighter took place almost one year after he had filed a prior suit, and the employee did not identify when a refusal to offer him leadership training occurred, thus, his retaliation claims failed. Jones v. City of Franklin, 468 Fed. Appx. 557, — F.3d —, 2012 U.S. App. LEXIS 6495, 2012 FED App. 343N (6th Cir.) (6th Cir. Tenn. 2012).

Regarding the retaliation claim, the record included sufficient evidence to raise a genuine dispute over the adequacy of the employer's investigation so as to overcome its honest belief defense. Mocic v. Sumner County Emergency Med. Servs., 929 F. Supp. 2d 790, 2013 U.S. Dist. LEXIS 31742 (M.D. Tenn. Mar. 7, 2013).

Where former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish retaliation under the Tennessee Human Rights Act because oral reprimand did not give rise to any significant change in benefits, alternation in responsibilities, or produced any actual injury, in any event there was no evidence that filing of discrimination charges was "but-for" cause of reprimand since employee clearly engaged in conduct prohibited by employee handbook. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish retaliation under the Tennessee Human Rights Act because oral reprimand did not give rise to any significant change in benefits, alternation in responsibilities, or produced any actual injury. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish retaliation under the Tennessee Human Rights Act because she failed to present any evidence that would allow reasonable juror to conclude her protected conduct in filing charges was "but-for" cause of particular doctor's decision to reduce her performance scores. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish retaliation under the Tennessee Human Rights Act from her selection for termination as part of a reduction-in-force because employer showed need to reduce staff employees after loss of two-thirds of doctors, credentials and seniority were determinative factors, and other staff members included in reduction were Caucasian and had been at office longer than her. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

17. Evidence Sufficient.

In age discrimination case brought under the Age Discrimination in Employment Act (29 U.S.C. §§ 621-634) and title 4, ch. 21, rational jury could have found unlawful age discrimination from fact that 35-year employee with a good work record was fired for apparently pretextual reasons, and any error judge may have made by admitting inflammatory prior statements by defendant's president, if any, was harmless. Cooley v. Carmike Cinemas, 25 F.3d 1325, 1994 FED App. 208P, 1994 U.S. App. LEXIS 14473 (6th Cir. 1994).

Repeated references to employee's age by company representative while informing the employee of his termination was evidence from which the jury could infer that age was a factor; thus, the trial court did not err in denying the company's motion for directed verdict in an action for unlawful age-based discharge. Flynn v. Shoney's, Inc., 850 S.W.2d 458, 1992 Tenn. App. LEXIS 883 (Tenn. Ct. App. 1992), rehearing denied, — S.W.2d —, 1992 Tenn. App. LEXIS 960 (Tenn. Ct. App. Dec. 2, 1992).

On claims of racial discrimination under Title VII and under the Tennessee Human Rights Act (THRA), plaintiff failed to show pretext after he established that he and the candidate who was promoted were equally qualified by offering other probative evidence of discrimination, including allegations of current and former employees, statistical data, and other incidents as examples of discriminatory atmosphere because "other act" evidence offered by plaintiff did not cast doubt on the basis of defendant's proffered legitimate, non-discriminatory reasons for promoting the other candidate. Artis v. Finishing Brands Holdings, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 34202 (W.D. Tenn. Mar. 19, 2015), aff'd in part, rev'd in part, Artis v. Finishing, 2016 U.S. App. LEXIS 1509, 639 Fed. Appx. 313, 2016 FED App. 50N (6th Cir. Tenn. 2016).

18. Evidence Insufficient.

The evidence was insufficient to establish discrimination on the basis of age. Bruce v. Western Auto Supply Co., 669 S.W.2d 95, 1984 Tenn. App. LEXIS 2871 (Tenn. Ct. App. 1984); Loeffler v. Kjellgren, 884 S.W.2d 463, 1994 Tenn. App. LEXIS 270 (Tenn. Ct. App. 1994); Mangrum v. Wal-Mart Stores, 950 S.W.2d 33, 1997 Tenn. App. LEXIS 51 (Tenn. Ct. App. 1997).

Because the plaintiff could not demonstrate that the employee who replaced him was younger than he was, the plaintiff did not present sufficient facts to establish all the elements of his age discrimination claim. Davis v. Connecticut General Life Ins. Co., 743 F. Supp. 1273, 1990 U.S. Dist. LEXIS 10640 (M.D. Tenn. 1990).

Plaintiff could not establish a prima facie case of discriminatory refusal to rehire due to his age; plaintiff did submit a reapplication, but he was deemed not qualified for the human resources generalist position by superiors, and there was sufficient evidence to support employer's claim that plaintiff was not qualified for the position. Brenner v. Textron Aerostructures, 874 S.W.2d 579, 1993 Tenn. App. LEXIS 762 (Tenn. Ct. App. 1993).

Plaintiff has not established a generic prima facie of age discrimination where although he was 47 years of age when he was terminated, and it was undisputed that he was qualified for the position he held at the time of his termination; however, there was undisputed evidence that plaintiff was not replaced by a younger person for his duties and responsibilities were redistributed to existing employees. Brenner v. Textron Aerostructures, 874 S.W.2d 579, 1993 Tenn. App. LEXIS 762 (Tenn. Ct. App. 1993).

In a case in which a female applicant for a firefighter position appealed a chancery court's dismissal of her Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., complaint against a city, in which she alleged that the physical agility exam for firefighters had a disparate impact on females, the physical agility exam did not cause a disparate impact on the basis of sex. She could have used an end-to-end method to replace a 24-foot ladder on a fire engine when she took the physical agility exam in 2005, but she failed to do so. Hayes v. City of Lexington, 334 S.W.3d 207, 2009 Tenn. App. LEXIS 758 (Tenn. Ct. App. Nov. 12, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 541 (Tenn. May 20, 2010).

Terminated employee had refused to work on Saturdays, her Sabbath, but her claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., failed at the summary judgment stage because the record demonstrated that the three disciplinary actions taken against her were based on her conduct and not on her religion or her requests not to work on Saturdays. She had not established a prima facie case of religious discrimination. Burdette v. Fed. Express Corp., 367 Fed. Appx. 628, 2010 FED App. 136N (6th Cir.), 108 Fair Empl. Prac. Cas. (BNA) 1291, 2010 U.S. App. LEXIS 4439 (6th Cir. Mar. 3, 2010).

In claims under the Age Discrimination in Employment Act and the Tennessee Human Rights Act, brought after defendant terminated plaintiff's employment, summary judgment for defendant was appropriate as plaintiff failed to establish a prima facie case. He could not show he was being treated differently from similarly situated employees as the relevant aspects of his employment duties as a captain were not the same as those of two security officers. Foust v. Metro. SEC. Servs., 829 F. Supp. 2d 614, 2011 U.S. Dist. LEXIS 129195 (E.D. Tenn. Nov. 8, 2011).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish discrimination under the Tennessee Human Rights Act because reduced evaluation score was not adverse employment action as it did not impact employee's raise. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish discrimination under the Tennessee Human Rights Act because doctor's proposed salary budget was not adverse employment action as it did not impact calculation of employee's subsequent raise. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish discrimination under the Tennessee Human Rights Act because particular reprimand was not disparate treatment as supervisor was not similarly situated employee and employee was subjected to same reprimand as similarly situated employee for similar conduct based on same incident. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish discrimination under the Tennessee Human Rights Act because although her termination due to reduction in force was adverse employment action, there was no showing that former doctor's arguably racial comment had any impact on termination, which occurred more than four months after his de-

parture from employer. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Former employee, African-American female, who worked as front office medical assistant for provider of health care and laboratory service, failed to establish discrimination under the Tennessee Human Rights Act because she did not identify any other similarly situated employees who were criticized for work errors as, even though she was not only front office staff member to make scheduling errors, there was no evidence that particular doctor observed anyone other than this employee make such errors. Swanson v. Summit Med. Grp., PLLC, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 118370 (E.D. Tenn. Sept. 3, 2015).

Employer was entitled to judgment as a matter of law as to an employee's claim of racial discrimination based on a demotion because the employee did not show other employees who were similarly situated to the employee were treated more favorably. Goree v. UPS, 490 S.W.3d 413, 2015 Tenn. App. LEXIS 828 (Tenn. Ct. App. Oct. 8, 2015), appeal denied, — S.W.3d —, 2016 Tenn. LEXIS 189 (Tenn. Mar. 23, 2016).

4-21-402. Labor organization practices.

It is a discriminatory practice for a labor organization to:

(1) Exclude or expel from membership, or otherwise to discriminate against a member or applicant for membership because of race, creed, color, religion, sex, age or national origin;

(2) Limit, segregate, or classify membership or application for membership or to classify or fail or refuse to refer for employment on the basis of race, creed, color, religion, sex, age or national origin, in a manner that would deprive or tend to deprive any person of employment opportunities, or that would limit employment opportunities or to otherwise adversely affect the status of an employee or of an applicant for employment because of race, creed, color, religion, sex, age or national origin; or

(3) Cause or attempt to cause an employer to violate this chapter.

History.

Acts 1978, ch. 748, § 8; modified; T.C.A., § 4-2106; Acts 1980, ch. 732, § 6; T.C.A., § 4-21-106.

NOTES TO DECISIONS

1. Burden of Proof.

While plaintiffs were part of a protected class due to their race and subjected to unwelcome harassment, they failed to show that the union's actions caused the employer to discriminate by having the offending employee reinstated; just because the offending employee's actions were reprehensible did not mean he was not entitled to union membership protection, plus the union's representation of him through the grievance process did not result in his reinstatement, which was the result of a neutral committee's decision. Bailey v. U.S.F. Holland, Inc., — S.W.3d —, 2020 Tenn. App. LEXIS 422 (Tenn. Ct. App. Sept. 18, 2020).

Plaintiffs, not the union, had the burden of proving intentional discrimination or retaliation. Bailey v. U.S.F. Holland, Inc., — S.W.3d —, 2020 Tenn. App. LEXIS 422 (Tenn. Ct. App. Sept. 18, 2020).

4-21-403. Employment agency practices.

It is a discriminatory practice for an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against any person because of race, creed, color, religion, sex, age or national origin.

History.

Acts 1978, ch. 748, § 9; T.C.A., § 4-2107; Acts 1980, ch. 732, § 6; T.C.A., § 4-21-107.

4-21-404. Training program practices.

It is a discriminatory practice for:

(1) An employer, labor organization, or joint labor-management committee controlling apprenticeship, or on-the-job, or other training or retraining programs, to discriminate against an individual because of race, creed, color, religion, sex, or national origin, in admission to, or employment in, a program established to provide apprenticeship or other training;

(2) An employer, labor organization, employment agency or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to print, publish or circulate or cause to be printed, published or circulated any statement, advertisement or publication relating to employment by such an employer, or membership in such organization or any classification or referral for employment by such labor organization, or relating to any classification or referral for employment by such an employment agency or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification or discrimination based on race, creed, color, religion, sex or national origin; except that such advertisement or publication may indicate preference, limitation or specification based on religion or sex when religion or sex is a bona fide occupational qualification for employment.

History.
Acts 1978, ch. 748, § 10; T.C.A., § 4-2108; Acts 1980, ch. 732, §§ 7, 8; 1983, ch. 44, § 1; T.C.A., § 4-21-108.

Law Reviews.
Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

4-21-405. Religious groups exempted.

This chapter shall not apply to religious corporations, associations, educational institutions, or societies, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society, of its religious activities.

History.
Acts 1978, ch. 748, § 11; T.C.A., §§ 4-2109, 4-21-109.

Law Reviews.
Employment Discrimination by Religious Institutions: Limiting the Sanctuary of the Constitutional Ministerial Exception to Religion-Based Employment Decisions, 54 Vand. L. Rev. 481 (2001).

4-21-406. Religion or sex as bona fide occupational qualifications — Affirmative action plans.

(a) It is not a discriminatory practice for:

(1) An employer to employ employees;

(2) An employment agency to classify, or refer for employment any individual;

(3) A labor organization to classify its members or to classify or refer for employment any individual; or

(4) An employer, labor organization, or joint training or retraining programs to admit or employ any individual in any such program;

on the basis of religion or sex in those certain instances where religion or sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(b) It is not a discriminatory practice for a person subject to this chapter to adopt and carry out a plan to fill vacancies or hire new employees so as to eliminate or reduce imbalance with respect to race, creed, color, religion, sex, age or national origin, if the plan has been filed with the commission and the commission has not disapproved the plan.

History.
Acts 1978, ch. 748, § 12; T.C.A., § 4-2110; Acts 1980, ch. 732, § 9; T.C.A., § 4-21-110.

Law Reviews.
Government Contractors Beware: Recent Changes to Federal Affirmative Action Requirements (James Francis Barna), 37 No. 9 Tenn. B.J. 14 (2001).

Attorney General Opinions.
T.C.A. § 4-21-406(b) neither takes affirmative action plans out of the realm of discrimination law nor contradicts United States Supreme Court opinions concerning the adoption of affirmative action plans; instead, it is a statutory defense to a claim of employment discrimination in violation of the Tennessee Human Rights Act, OAG 01-140, 2001 Tenn. AG LEXIS 147 (9/4/01).

4-21-407. Age discrimination.

(a) It is not unlawful for an employer, employment agency or labor organization to:

(1) Discriminate in employment on the basis of age where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or

(2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by § 4-21-101(b) because of the age of such individual, unless otherwise provided by law.

(b) The prohibitions imposed by this chapter relating to age discrimination in employment shall be limited to individuals who are at least forty (40) years of age.

(c) Notwithstanding any other provisions of this chapter relating to age discrimination in employment, it is not unlawful for an employer, employment agency or labor organization subject to the other provisions of this chapter to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual covered by this chapter because of the age of such individual.

(d) Nothing in this chapter relating to age discrimination shall be construed

to prohibit compulsory retirement of any employee who has attained sixty-five (65) years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such employee, that equals, in the aggregate, at least forty-four thousand dollars ($44,000).

(e)(1) It is not unlawful for an employer subject to this chapter to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken:

(A) With respect to the employment of an individual as a firefighter or a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable state or local law on March 3, 1983; and

(B) Pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(2) For the purposes of this part, unless the context otherwise requires:

(A) "Firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

(B) "Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses against state criminal laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purposes of this subdivision (e)(2)(B), "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.

(3) This subsection (e) shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.), as in effect before January 1, 1987.

History.

Acts 1980, ch. 732, §§ 10, 11; T.C.A., §§ 4-21-125, 4-21-126; Acts 1988, ch. 714, §§ 1-5; 1992, ch. 1027, § 18.

Cross-References.

Mandatory retirement age, § 8-36-205.

Law Reviews.

Age Discrimination: A Growth Industry (Charles H. Anderson), 25 No. 6 Tenn. B.J. 24 (1989).

Confusion over "Comparables": Will the Sixth Circuit Stick to One Standard with Respect to "Similarly Situated" Employees? (David L. Hudson Jr.), 37 No. 11 Tenn. B.J. 25 (2001).

Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine After Reeves v. Sanderson Plumbing Products, 55 Vand. L. Rev. 219 (2002).

NOTES TO DECISIONS

Analysis

1. Construction and Interpretation.
2. Jurisdiction.
3. Statutes of Limitation.
4. Standard of Proof.
5. Evidence Insufficient.

1. Construction and Interpretation.

The substantive provisions of T.C.A. § 4-21-407 are virtually identical to the federal Age Discrimination in Employment Act, 29 U.S.C.

§ 623(f)(1) and (2). Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

2. Jurisdiction.

State courts have jurisdiction to hear actions brought under the federal Age Discrimination in Employment Act , 29 U.S.C. § 621 et seq., and it is inappropriate for the court to refuse to accept jurisdiction. Parker v. Ft. Sanders Regional Medical Center, 677 S.W.2d 455, 1983 Tenn. App. LEXIS 721 (Tenn. Ct. App. 1983).

3. Statutes of Limitation.

An action alleging age discrimination in employment based upon T.C.A. § 4-21-407, which was filed as a direct action in the chancery court under former T.C.A. § 4-21-124 (now T.C.A. § 4-21-311), was an action alleging in substance a federal civil rights statutory violation, and the statute of limitations in T.C.A. § 28-3-104 applied, rather than either the limitations in T.C.A. § 4-21-302 or the general limitations in the federal act. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

Where the substance of the complaint alleges a federal civil rights statutory violation, Tennessee's general statute of limitations for actions brought in state courts, T.C.A. § 28-3-104, is applicable in the absence of a specific statute of limitation. Hoge v. Roy H. Park Broadcasting, Inc., 673 S.W.2d 157, 1984 Tenn. App. LEXIS 3403 (Tenn. Ct. App. 1984).

4. Standard of Proof.

The standard for proving age discrimination is that the plaintiff must prove age was a determining factor in the employer's decision to terminate the plaintiff. Bruce v. Western Auto Supply Co., 669 S.W.2d 95, 1984 Tenn. App. LEXIS 2871 (Tenn. Ct. App. 1984).

Once an age discrimination plaintiff has established a prima facie case, the burden of proof shifts to the employer to rebut the presumption of discrimination by articulating a legitimate nondiscriminatory reason for the employment decision. Loeffler v. Kjellgren, 884 S.W.2d 463, 1994 Tenn. App. LEXIS 270 (Tenn. Ct. App. 1994).

5. Evidence Insufficient.

The evidence was insufficient to establish discrimination on the basis of age. Bruce v. Western Auto Supply Co., 669 S.W.2d 95, 1984 Tenn. App. LEXIS 2871 (Tenn. Ct. App. 1984); Loeffler v. Kjellgren, 884 S.W.2d 463, 1994 Tenn. App. LEXIS 270 (Tenn. Ct. App. 1994).

4-21-408. Leave for adoption, pregnancy, childbirth and nursing an infant.

(a) Employees who have been employed by the same employer for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable, referred to as "leave" in this section. With regard to adoption, the four-month period shall begin at the time an employee receives custody of the child.

(b)(1) Employees who give at least three (3) months' advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

(2) Employees who are prevented from giving three (3) months' advance notice because of a medical emergency that necessitates that leave begin earlier than originally anticipated shall not forfeit their rights and benefits under this section solely because of their failure to give three (3) months' advance notice.

(3) Employees who are prevented from giving three (3) months' advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights and benefits under this section solely because of their failure to give three (3) month's advance notice.

(c)(1) Leave may be with or without pay at the discretion of the employer. Such leave shall not affect the employees' right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employees' employment position; provided, that the employer need not provide for the cost of any benefits, plans or programs during the period of such leave, unless such employer so provides for all employees on leaves of absence.

(2) If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave period.

(3) The purpose of this section is to provide leave time to employees for adoption, pregnancy, childbirth and nursing the infant, where applicable; therefore, if an employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or if the employer finds that the employee has worked part time or full time for another employer during the period of leave, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave.

(4) Whenever the employer shall determine that the employee will not be reinstated at the end of the leave because the employee's position cannot be filled temporarily or because the employee has used the leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

(d) Nothing contained within this section shall be construed to:

(1) Affect any bargaining agreement or company policy that provides for greater or additional benefits than those required under this section;

(2) Apply to any employer who employs fewer than one hundred (100) full-time employees on a permanent basis at the job site or location; or

(3) Diminish or restrict the rights of teachers to leave pursuant to title 49, chapter 5, part 7, or to return or to be reinstated after leave.

(e) This section shall be included in the next employee handbook published by the employer after May 27, 2005.

History.

Acts 1987, ch. 373, § 1; T.C.A., §§ 50-1-501 — 50-1-505; Acts 1988, ch. 607, §§ 1-3; 1991, ch. 430, § 1; 2005, ch. 224, § 1.

Cross-References.

Leave for adoptive parents, § 8-50-806.

Sick leave, § 8-50-802.

Law Reviews.

Revisiting the Tennessee Employment-At-Will Doctrine — What Is the Exception and What Is the Rule? (Frederick J. Lewis, Jeffery A. Jarratt), 19 Mem. St. U.L. Rev. 171 (1989).

Attorney General Opinions.

Constitutionality, construction, OAG 87-193, 1987 Tenn. AG LEXIS 5 (12/17/87).

Constitutionality of proposed amendments, OAG 88-33, 1988 Tenn. AG LEXIS 33 (2/11/88).

Tennessee Maternity Leave Act, OAG 91-22, 1991 Tenn. AG LEXIS 24 (3/12/91).

Construction with federal act, OAG 94-006, 1994 Tenn. AG LEXIS 32 (1/13/94).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Discrimination Not Found.

1. Applicability.

Because the employee had employed less than 100 employees the Tennessee Maternity and Adoption Care Leave Act (TMLA), T.C.A. § 4-21-408, did not apply. Treadaway v. Big Red Powersports, LLC, 611 F. Supp. 2d 768, 2009 U.S. Dist. LEXIS 19884 (E.D. Tenn. Mar. 12, 2009).

2. Discrimination Not Found.

Employer was granted summary judgment as to the Tennessee Human Rights Act maternity leave statutory claim because the temporal relationship between the employer's knowledge of the employee's pregnancy and the adverse employment action was not sufficient to warrant an inference of retaliation; the employer knew the employee was pregnant for nearly six months before it decided to terminate her employment. Payne v. Goodman Mfg. Co., L.P., 726 F. Supp. 2d 891, 2010 U.S. Dist. LEXIS 67191 (E.D. Tenn. July 6, 2010).

PART 5

DISCRIMINATION IN PUBLIC ACCOMMODATIONS

4-21-501. Discrimination prohibited.

Except as otherwise provided in this chapter, it is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, resort or amusement, as defined in this chapter, on the grounds of race, creed, color, religion, sex, age or national origin.

History.

Acts 1978, ch. 748, § 13; T.C.A., § 4-2111; Acts 1980, ch. 732, § 9; T.C.A., § 4-21-111.

Law Reviews.

Perceived Disabilities, Social Cognition, and "Innocent Mistakes," 55 Vand. L. Rev. 481 (2002).

Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine After Reeves v. Sanderson Plumbing Products, 55 Vand. L. Rev. 219 (2002).

The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing (James A. Kushner), 42 Vand. L. Rev. 1049 (1989).

The Sins of Innocence in Standing Doctrine, 68 Vand. L. Rev. 297 (2015).

Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing, 46 U. Mem. L. Rev. 1009 (2016).

Attorney General Opinions.

Public establishments' denial of admittance to persons wearing motorcycle club insignia. OAG 13-5, 2013 Tenn. AG LEXIS 54 (7/12/13).

NOTES TO DECISIONS

Analysis

1. Burden of Proof.
2. Prima Facie Case.
3. Discrimination Not Established.

1. Burden of Proof.

In a public accommodations case under title 4, ch. 21, the plaintiff bears the initial burden of establishing a prima facie case, and, if the plaintiff succeeds, the burden shifts to the defendant to proffer a legitimate non-discriminatory reason for the challenged action. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

2. Prima Facie Case.

A prima facie case of discrimination under T.C.A. § 4-21-501 cannot be established absent a showing of either a denial of access or disparate treatment designed to deny or deter access. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

3. Discrimination Not Established.

Employee failed to establish a prima facie case of discrimination based on allegations that the employee was forced by employer to play music in a hotel lounge that would induce black patrons to leave, since the employee's actions

did not subject different classes to disparate treatment where all patrons were subjected to the same music selections. Phillips v. Interstate Hotels Corp. #L07, 974 S.W.2d 680, 1998 Tenn. LEXIS 350 (Tenn. 1998).

Plaintiff's racial profiling claim failed, because plaintiff failed to present evidence to support the denial-of-access requirement and, even if plaintiff could present a prima facie case of racial profiling or discrimination, defendant carried its ensuing burden of showing a legitimate, non-discriminatory reason for its employee's stop of plaintiff, the activation of the electronic article surveillance system. Freeman v. Wal-mart Stores East, LP, 781 F. Supp. 2d 661, 2011 U.S. Dist. LEXIS 14005 (E.D. Tenn. Feb. 11, 2011).

4-21-502. Advertisement indicating discriminatory policy.

It is a discriminatory practice for a person, directly or indirectly, to publish, circulate, issue, display or mail or cause to be published, circulated, issued, displayed or mailed a written, printed, oral or visual communication, notice or advertisement that indicates that the goods, services, facilities, privileges, advantages and accommodations or a place of public accommodation, resort or amusement will be refused, withheld from or denied an individual on account of the individual's race, creed, color, religion, sex or national origin; or that the patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual on account of the individual's race, creed, color, religion, sex, age or national origin is objectionable, unwelcome, unacceptable or undesirable.

History.
Acts 1978, ch. 748, § 14; T.C.A., § 4-2112; Acts 1980, ch. 732, § 9; T.C.A., § 4-21-112.

4-21-503. Segregation on basis of sex.

Nothing in this part shall prohibit segregation on the basis of sex of bathrooms, health clubs, rooms for sleeping or changing clothes, or other places of public accommodation the commission specifically exempts on the basis of bona fide considerations of public policy.

History.
Acts 1978, ch. 748, § 15; T.C.A., §§ 4-2113, 4-21-113.

PART 6

DISCRIMINATION IN HOUSING AND FINANCING

4-21-601. Discriminatory housing practices generally.

(a) It is a discriminatory practice for any person because of race, color, creed, religion, sex, disability, familial status or national origin, to:

(1) Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, real property or a housing accommodation to a person;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of real property or a housing accommodation, or in the provision of services or facilities in connection therewith;

(3) Refuse to receive or transmit a bona fide offer to purchase, rent or

lease real property or a housing accommodation from a person;

(4) Represent to a person that real property or a housing accommodation is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit a person to inspect real property or a housing accommodation;

(5) Make, print, publish, circulate, post or mail or cause to be made, printed, published, circulated, posted or mailed a notice, statement, advertisement or sign, or use a form of application for the purchase, rental or lease of real property or a housing accommodation, or make a record of inquiry in connection with the prospective purchase, rental or lease of real property or a housing accommodation, that indicates, directly or indirectly, a limitation, specification or discrimination as to race, color, creed, religion, sex, disability, familial status or national origin or an intent to make such a limitation, specification or discrimination;

(6) Offer, solicit, accept, use or retain a listing of real property or a housing accommodation for sale, rental or lease with the understanding that a person may be discriminated against in the sale, rental or lease of that real property or housing accommodation or in the furnishing of facilities or services in connection therewith; or

(7) Deny any person access to, or membership or participation in, any multiple-listing services, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation.

(b)(1) It is a discriminatory practice for any person to:

(A) Discriminate in the sale or rental of, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(i) The buyer or renter;

(ii) A person residing in or intending to reside in the dwelling after it is so sold, rented or made available; or

(iii) Any person associated with the buyer or renter; or

(B) Discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(i) The person;

(ii) A person residing in or intending to reside in the dwelling after it is so sold, rented or made available; or

(iii) Any person associated with the person.

(2) For purposes of this subsection (b), "discriminate" includes:

(A) Refusing to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, no modification need be permitted unless the renter first agrees to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted, unless previously negotiated with the landlord;

(B) Refusing to make reasonable accommodations in rules, policies,

practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, failing to design and construct those dwellings in such a manner that:

(i) The dwellings have at least one (1) building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or

(ii) With respect to dwellings with a building entrance on an accessible route:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

(b) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(c) All premises within such dwellings contain the following features of adaptive design:

(1) An accessible route into and through the dwelling;

(2) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(3) Reinforcements in bathroom walls to allow later installation of grab bars; and

(4) Usable kitchens and bathrooms, such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of subdivision (b)(2)(C)(ii).

(4) As used in this subsection (b), "covered multifamily dwellings" means:

(A) Buildings consisting of four (4) or more units if such buildings have one (1) or more elevators; and

(B) Ground floor units in other buildings consisting of four (4) or more units.

(5) Nothing in this subsection (b) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(c) It is a discriminatory practice for a person in the business of insuring against hazards to refuse to enter into, or discriminate in the terms, conditions, or privileges of, a contract of insurance against hazards to a housing accommodation or real property because of the race, color, creed, religion, sex or national origin of the person owning, or residing in or near the housing accommodations or real property.

(d) It is a discriminatory practice for a person to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

(e) This section may also be enforced by appropriate civil action.

History.

Acts 1984, ch. 1007, § 4; T.C.A., § 4-21-127; Acts 1990, ch. 937, §§ 2, 3; 1992, ch. 1027, §§ 10, 11; 2008, ch. 706, §§ 1, 2.

Law Reviews.

The Sins of Innocence in Standing Doctrine, 68 Vand. L. Rev. 297 (2015).

Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing, 46 U. Mem. L. Rev. 1009 (2016).

Attorney General Opinions.

Manager's refusal to lease upstairs apartments to families with children violates law, OAG 94-135, 1994 Tenn. AG LEXIS 163 (11/21/94).

Applicability of subsection (d) to persons not involved in real estate transactions, OAG 99-046, 1999 Tenn. AG LEXIS 53 (3/1/99).

Effect of public advertisement on owner's exemption from prohibitions, OAG 99-046, 1999 Tenn. AG LEXIS 53 (3/1/99).

Limitations on political contributions by major lottery contractors, OAG 03-055, 2003 Tenn. AG LEXIS 72 (4/30/03).

Enforcement of municipal ordinance in state court, OAG 03-061, 2003 Tenn. AG LEXIS 77 (5/07/03).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Commercial Leases.
3. Advertising.

1. Applicability.

Residents of a mobile home park stated a national origin discrimination claim based on alleged mistreatment that occurred after the residents obtained housing, as the phrase "in connection therewith" protected against discrimination in the provision of services or facilities in connection with a dwelling, not just the sale or rental of a dwelling. Guevara v. Umh Props., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 154394 (W.D. Tenn. Oct. 29, 2014).

2. Commercial Leases.

The Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., plainly prohibits discrimination with regard to housing accommodations or real property; a commercial lease clearly falls within the definition of "real property." Woods v. Herman Walldorf & Co., 26 S.W.3d 868, 1999 Tenn. App. LEXIS 18 (Tenn. Ct. App. 1999).

3. Advertising.

Hispanic residents of mobile home park stated a claim by alleging that the park owners and managers advertised only in Spanish language media and thereby excluded African-Americans. Guevara v. Umh Props., — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 154394 (W.D. Tenn. Oct. 29, 2014).

4-21-602. Exemption from housing provisions.

(a) Nothing in § 4-21-601 shall apply to:

(1) The rental of housing accommodations in a building that contains housing accommodations for not more than two (2) families living independently of each other, if the owner or a member of the owner's family resides in one (1) of the housing accommodations;

(2) The rental of one (1) room or one (1) rooming unit in a housing accommodation by an individual if such individual or a member of such individual's family resides therein, or, as regards to sex, rooms or rental units where the tenants would be required to share a common bath;

(3) A religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, that limits the sale, rental or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or that gives preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin; or

(4) As regards to sex, the rental of housing accommodations of single-sex

dormitory rental properties, including, but not limited to, those dormitories operated by higher educational institutions.

(b) Nothing in this chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(c) Nothing in subsection (a) shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title.

(d)(1) Nothing in this part limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this part regarding familial status apply with respect to dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, or to housing for older persons.

(2) As used in this subsection (d), "housing for older persons" means housing communities consisting of dwellings:

(A)(i) Intended for, and at least ninety percent (90%) occupied by, at least one (1) person fifty-five (55) years of age or older per unit;

(ii) Providing significant facilities and services specifically designed to meet the physical or social needs of such persons; and

(iii) Publishing and adhering to policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older;

(B) Intended for and occupied solely by persons sixty-two (62) years of age or older.

(3) Nothing in this part prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802), or controlled substance or controlled substance analogue, as defined in the Tennessee Drug Control Act, compiled in title 39, chapter 17, part 4.

History.

Acts 1984, ch. 1007, § 5; T.C.A., § 4-21-128; Acts 1990, ch. 937, § 4; 1992, ch. 1027, §§ 12-15; 2012, ch. 848, § 3.

Attorney General Opinions.

Effect of public advertisement on owner's exemption from prohibitions, OAG 99-046, 1999 Tenn. AG LEXIS 53 (3/1/99).

4-21-603. Blockbusting.

It is a discriminatory practice for a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these, or any other person, for the purpose of inducing a real estate transaction from which such person may benefit financially to:

(1) Represent that a change has occurred or will or may occur in the composition with respect to race, color, creed, religion, sex, disability, familial status or national origin of the owners or occupants in the block, neighborhood or area in which the real property is located; or

(2) Represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline

in the quality of schools in the block, neighborhood or area in which the real property is located.

History.
Acts 1984, ch. 1007, § 6; T.C.A., § 4-21-129;
Acts 1992, ch. 1027, § 16; 2008, ch. 706, § 1.

4-21-604. Restrictive covenants and conditions.

(a) Every provision in an oral agreement or a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, color, creed, religion, sex or national origin is void.

(b) Every condition, restriction or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, color, creed, religion, sex or national origin is void, except a limitation of use on the basis of religion of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(c) It is a discriminatory practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.

History.
Acts 1984, ch. 1007, § 7; T.C.A., § 4-21-130.

4-21-605. Agency no defense in proceeding.

It shall be no defense to a violation of this chapter by a real estate operator, real estate broker, real estate salesperson, financial institution, or other person subject to this chapter that the violation was requested, sought or otherwise procured by a person not subject to this chapter.

History.
Acts 1984, ch. 1007, § 8; T.C.A., § 4-21-131.

4-21-606. Residential real estate-related transactions.

(a) It is an unlawful practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such transaction, or in the terms and conditions of such transaction, because of race, color, creed, religion, sex, disability, familial status or national origin.

(b) As used in this section, "residential real estate-related transaction" means:

(1) The making or purchasing of loans or providing financial assistance:

(A) For purchasing, constructing, improving, repairing, or maintaining a dwelling;

(B) Where the security is residential real estate; or

(2) The selling, brokering, or appraising of residential real estate.

History.
Acts 1984, ch. 1007, § 9; T.C.A., § 4-21-132; Acts 1992, ch. 1027, § 17; 2008, ch. 706, § 1.

4-21-607. Violations by real estate brokers or salespersons — Notice to real estate commission.

Where a real estate broker or a real estate salesperson has failed to comply with any order issued by the commission or has been found to have committed a discriminatory housing practice in violation of § 4-21-601 or § 4-21-603, the commission shall notify in writing the real estate commission of the failure to comply or the violation.

History.
Acts 1984, ch. 1007, § 10; T.C.A., § 4-21-133.

PART 7
MALICIOUS HARASSMENT

4-21-701. Creation of civil action — Damages.

(a) There is hereby created a civil cause of action for malicious harassment.

(b) A person may be liable to the victim of malicious harassment for both special and general damages, including, but not limited to, damages for emotional distress, reasonable attorney's fees and costs, and punitive damages.

History.
Acts 1990, ch. 908, § 1; 1996, ch. 675, § 8.

Cross-References.
Harassment, § 39-17-308.
Instruction to raise awareness and prevent hate crimes and sexual offenses, § 49-7-137.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71; 23 Tenn. Juris., Threats, § 2.

Attorney General Opinions.
When this section is read in context and as it relates to T.C.A. § 39-17-309, an individual would not have a cause of action for malicious harassment under this section unless the person alleging malicious harassment claimed that it occurred because of her race, color, ancestry, religion or national origin, OAG 04-129, 2004 Tenn. AG LEXIS 137 (8/11/04).

NOTES TO DECISIONS

Analysis

1. Application and Scope.
2. Jurisdiction.
3. Elements.

1. Application and Scope.
A claim by plaintiff employee alleging age discrimination and retaliation, even assuming that defendant employer's alleged treatment of plaintiff was intended to intimidate her because she exercised her statutory rights, did not state a cause of action since T.C.A. § 39-17-309 does not mention age in its declaration of rights, and defendant's conduct did not amount to injury, a threat of injury or coercion within the meaning thereof. Young v. State Farm Mut. Auto. Ins. Co., 868 F. Supp. 937, 1994 U.S. Dist. LEXIS 19740 (W.D. Tenn. 1994).

Complaint of former employee in a wrongful termination action that she was subjected to "various forms and degrees of discrimination and harassment by the Executive Director and other employees" did not set forth with sufficient specificity acts constituting "malicious" harassment. Johnson v. South Cent. Human Resource Agency, 926 S.W.2d 951, 1996 Tenn. App. LEXIS 42 (Tenn. Ct. App. 1996).

The use of T.C.A. § 4-21-701 in the context of employment discrimination would indeed be rare and in this case the plaintiff's workplace complaints amount to no more than arguable

inconveniences and are certainly not the sort of activities that would give rise to an action for malicious harassment, even under a liberal interpretation of T.C.A. § 4-21-701. Gann v. Chevron Chem. Co., 52 F. Supp. 2d 834, 1999 U.S. Dist. LEXIS 9269 (E.D. Tenn. 1999).

A government or a government agency may be held liable for the acts of its employees committed in the course and scope of employment in accordance with the doctrine of respondeat superior; an individual, including an employee working for a government agency, may be held liable for malicious harassment. Carr v. Robertson County, 29 S.W.3d 466, 2000 Tenn. LEXIS 546 (Tenn. 2000).

Court did not err in dismissing a malicious harassment claim where the court found that defendants had no intent to harass plaintiffs based on their race, color, religion, ancestry or national origin; rather, the trial court concluded that defendants' actions were motivated by what they perceived that plaintiffs did to them. Levy v. Franks, 159 S.W.3d 66, 2004 Tenn. App. LEXIS 438 (Tenn. Ct. App. 2004), review or rehearing denied, — S.W.3d —, 2004 Tenn. LEXIS 1075 (Tenn. Dec. 6, 2004).

Court did not err in dismissing a conspiracy to commit malicious harassment claim where the court found that defendants had no intent to harass plaintiffs based on their race, color, religion, ancestry or national origin; in addition, there was no concerted action. Levy v. Franks, 159 S.W.3d 66, 2004 Tenn. App. LEXIS 438 (Tenn. Ct. App. 2004), review or rehearing denied, — S.W.3d —, 2004 Tenn. LEXIS 1075 (Tenn. Dec. 6, 2004).

As a result of an automobile accident, plaintiff was partially paralyzed, had a speech impediment, and difficulty talking; she claimed that she was harassed at work. Plaintiff failed to state a claim for malicious harassment under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq; harassment based on disability was not covered by the statute. Oates v. Chattanooga Publ'g Co., 205 S.W.3d 418, 2006 Tenn. App. LEXIS 190 (Tenn. Ct. App. 2006), appeal denied, — S.W.3d —, 2006 Tenn. LEXIS 865 (Tenn. Sept. 25, 2006).

2. Jurisdiction.

There is no express consent by Tennessee, either within the Tennessee Human Rights Act (THRA), compiled in T.C.A. § 4-21-101 et seq., or elsewhere, to suit in federal court for claims under the THRA; therefore, an action for malicious harassment against state agencies under the THRA could only be brought before the human rights commission or in chancery court. Boyd v. Tennessee State Univ., 848 F. Supp. 111, 1994 U.S. Dist. LEXIS 3781 (M.D. Tenn. 1994).

3. Elements.

The elements of a civil malicious harassment action under this section are derived from the criminal offense of civil rights intimidation under T.C.A. § 39-17-309 that requires not only that a person acted maliciously, i.e., ill-will, hatred or spite, but also that a person unlawfully intimidated another from the free exercise or enjoyment of a constitutional right by injuring or threatening to injure or coercing another person or by damaging, destroying or defacing any real or personal property of another person. Carr v. Robertson County, 29 S.W.3d 466, 2000 Tenn. LEXIS 546 (Tenn. 2000).

Trial court did not err in dismissing a benefit enrollee's cause of action against state officials for malicious harassment because the enrollee did not assert a claim based on race, color, ancestry, religion, or national origin. Davidson v. Bredesen, 330 S.W.3d 876, 2009 Tenn. App. LEXIS 791 (Tenn. Ct. App. Nov. 23, 2009), rehearing denied, — S.W.3d —, 2009 Tenn. App. LEXIS 863 (Tenn. Ct. App. Dec. 16, 2009), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 585 (Tenn. June 18, 2010).

Trial court did not err in dismissing a wife's claim against a city for malicious harassment under T.C.A. §§ 4-21-101 and 4-21-701 of the Government Tort Liability Act, because at oral argument of the matter, the wife conceded that she could not, in good faith, allege that police officers' conduct was motivated by considerations of race, color, religion, ancestry or national origin; to establish a claim for malicious harassment under T.C.A. § 4-21-701, the plaintiff has to demonstrate conduct motivated by race, color, religion, ancestry or national origin. Bowman v. City of Memphis, 329 S.W.3d 766, 2010 Tenn. App. LEXIS 47 (Tenn. Ct. App. Jan. 27, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 613 (Tenn. June 17, 2010).

County and a county board of education were entitled to judgment as a matter of law with respect to a teacher's harassment claim because the teacher made no allegation that the teacher was harassed due to the teacher's race, color, ancestry, religion, or national origin. Blair v. Rutherford County Bd. of Educ., — S.W.3d —, 2013 Tenn. App. LEXIS 471 (Tenn. Ct. App. July 19, 2013), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 913 (Tenn. Nov. 13, 2013), cert. denied, 188 L. Ed. 2d 758, 134 S. Ct. 1797, 572 U.S. 1047, 2014 U.S. LEXIS 2452 (U.S. 2014).

Arrestee's claim against law enforcement for malicious harassment failed to state a claim because he did not not contend that their actions were based on his race, color, ancestry, religion or national origin. Carnett v. WBBJ-TV, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 177822 (W.D. Tenn. Sept. 25, 2015).

4-21-702. Alternative remedies preserved.

The remedy for malicious harassment provided in this part shall be in addition to, and shall not preclude victims from seeking, other remedies, criminal or civil, otherwise available under the law.

History.
Acts 1990, ch. 908, § 1.

Cross-References.
Civil rights intimidation, § 39-17-309.
Harassment, § 39-17-308.

PART 8

CIVIL RIGHTS ACT OF 1990

4-21-801. Short title.

This part shall be known and may be cited as the "Civil Rights Act of 1990."

History.
Acts 1990, ch. 1053, § 1.

Textbooks.
Tennessee Jurisprudence. 6A Tenn. Juris., Constitutional Law, § 71.

4-21-802. State activities and expenditures prohibited.

(a) No state official, employee or agency shall sponsor or organize a meeting or other activity, the purpose of which is related to state business, including any athletic competition, in an establishment or facility that does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability.

(b) No state funds shall be expended in connection with a meeting or other activity held at an establishment or facility that does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability.

(c) No state official, employee or agent shall be reimbursed for dues or other expenses incurred at an establishment or facility that does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin or disability.

(d) This section shall not apply to state officials, employees or agents acting in the course of ongoing law enforcement, code enforcement or other required investigations and inspections.

(e) For the purposes of this section, a "public official" is a person who holds an elected or appointed position in state government.

History.
Acts 1990, ch. 1053, § 2.

Attorney General Opinions.
T.C.A. §§ 4-21-802(a) and 4-21-803(a) are defensible from a facial constitutional challenge. OAG 13-20, 2013 Tenn. AG LEXIS 20 (3/13/13).

4-21-803. Commercial agreements with the state — Prohibition — Required statement.

(a) No state official, employee or agent shall enter into a commercial agreement on behalf of the state with a club that denies to a person entry, use of facilities or membership, or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

(b) Prior to entering into a commercial agreement with the state, a club must file a statement, verified by the president or chief executive officer of the club, that it does not deny a person entry, use of facilities or membership or unreasonably prevent the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

History.
Acts 1990, ch. 1053, § 3.

Law Reviews.
Jurisdiction, Venue and "Localized Actions" in Tennessee (June F. Entman), 39 No. 4 Tenn. B.J. 33 (2003).

Attorney General Opinions.
T.C.A. §§ 4-21-802(a) and 4-21-803(a) are defensible from a facial constitutional challenge. OAG 13-20, 2013 Tenn. AG LEXIS 20 (3/13/13).

4-21-804. Higher education adjunct organizations — Provision of discriminatory club membership prohibited.

No adjunct organization, including, but not limited to, booster groups, of a state university, community college or institution of higher learning shall enter into a contract on behalf of, or purchase membership for, an employee of such university, college or institution of higher learning to a club that denies to a person entry, use of facilities or membership, or unreasonably prevents the full enjoyment of such club on the basis of sex, race, creed, color, religion, ancestry, national origin or disability.

History.
Acts 1990, ch. 1053, § 4.

4-21-805. Enforcement.

(a)(1) The state of Tennessee or a person who is discriminated against in violation of this part may enforce this part by means of a civil action.

(2) A person found to violate any of this part is liable for the actual damages caused by such violation and such other amount as may be determined by a jury or a court sitting without a jury, but in no case less than two hundred fifty dollars ($250), plus, in addition thereto, reasonable attorney's fees and court costs as may be determined by the court.

(b)(1) A person who commits an act or engages in any pattern and practice of discrimination in violation of this part may be enjoined therefrom by a court of competent jurisdiction.

(2) An action for injunction under this subsection (b) may be brought by a person who is discriminated against in violation of this part by the state, or by a person or entity that will fairly and adequately represent the interests of the protected class.

(c) Nothing in this part shall preclude any person from seeking any other

remedies, penalties or procedures provided by law. No criminal penalties shall attach for a violation of this part.

History.
Acts 1990, ch. 1053, § 5.

4-21-806. Exemption — Religious organizations.

(a) Nothing in this part shall be construed to prohibit a religious organization or any organization operating solely for religious, charitable, educational or social welfare purposes from restricting membership or facilities to persons of the same religious faith, where necessary to promote the religious principles under which it was established and is currently maintained.

(b) This exemption applies only to organizations whose primary purpose is to serve members of a particular religion.

History.
Acts 1990, ch. 1053, § 6.

PART 9

TITLE VI IMPLEMENTATION PLANS

4-21-901. Development of plan — Annual reports.

Each state governmental entity subject to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and regulations promulgated pursuant thereto, shall develop a Title VI implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title VI implementation plans of any subrecipients of federal funds through the state entity. Each such state governmental entity shall submit annual Title VI compliance reports and implementation plan updates to the human rights commission pursuant to § 4-21-203.

History.
Acts 1993, ch. 502, § 1; 2007, ch. 97, § 1; 2010, ch. 765, § 1.

Compiler's Notes.
For an Order establishing the Tennessee Title VI Compliance Commission, see Executive Order No. 34 (August 9, 2002).

Attorney General Opinions.
Title VI implementation plans are to be submitted to the department of audit, and not the human rights commission, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

The Title VI compliance commission is neither authorized nor required to make rules for the administration and handling of allegations of noncompliance with Title VI, OAG 03-161, 2003 Tenn. AG LEXIS 173 (12/10/03).

It is permissible for the Title VI compliance commission to operate under applicable rules of the Tennessee human rights commission for the administration and handling of allegations of noncompliance with Title VI, OAG 03-161, 2003 Tenn. AG LEXIS 173 (12/10/03).

4-21-902. Federal funding.

It is the legislative intent that any increased costs incurred by state entities as a result of this section shall, to the extent legally available, be paid from federal funds available therefor.

History.
Acts 1993, ch. 502, § 1.

Attorney General Opinions.
Tennessee human rights commission — Authority to investigate "improper administration of justice," OAG 99-192, 1999 Tenn. AG LEXIS 206 (9/28/99).

4-21-903. [Reserved.]

4-21-904. Discrimination by funded programs prohibited.

It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin.

History.
Acts 1995, ch. 381, § 1.

Compiler's Notes.
Title VI of the Civil Rights Act of 1964, referred to in this section, is compiled in 42 U.S.C. § 2000d et seq.

Attorney General Opinions.
The human rights commission has authority to process complaints alleging violations of T.C.A. § 4-21-904 against state agencies or persons receiving federal funds from a state agency; thus, local government entities, educational institutions, private for profit and nonprofit corporations can only be included in specific instances where they are considered persons receiving such federal funds from a state agency, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

The human rights commission has no direct authority to monitor recipients and subrecipients of federally funded programs and activities for compliance with the statute, except to the extent that it is implicit in the commission's authority, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

The human rights commission has authority to process complaints alleging violations of T.C.A. § 4-21-904, which includes the authority to investigate such complaints under T.C.A. § 4-21-302; the commission is also authorized to review complaints filed with state agencies under T.C.A. § 4-21-905 to determine whether Title VI of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., is applicable, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

4-21-905. Filing a complaint.

(a) Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state department, agency or entity receiving the funds within one hundred eighty (180) days of the occurrence of the alleged discriminatory act. Any such complaint filed with a state department, agency or entity is subject to review by the Title VI compliance commission for applicability under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.).

(b) Any person claiming to be aggrieved by a discriminatory practice under this part may also file a complaint with the Title VI compliance commission, in the same manner established in § 4-21-302, for other discriminatory practices. If such a complaint is filed with the Title VI compliance commission pursuant to this section, then the commission shall exercise the same powers and shall observe the same procedures as are set forth in part 3 of this chapter for the human rights commission when complaints of other discriminatory practices are filed with the commission pursuant to § 4-21-302.

History.
Acts 1995, ch. 381, § 1; 2003, ch. 218, § 1.

Attorney General Opinions.
The human rights commission has authority to process complaints alleging violations of T.C.A. § 4-21-904, which includes the authority to investigate such complaints under T.C.A. § 4-21-302; the commission is also authorized to review complaints filed with state agencies under T.C.A. § 4-21-905 to determine whether Title VI of the Federal Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., is applicable, OAG 00-107, 2000 Tenn. AG LEXIS 109 (6/12/00).

PART 10

TENNESSEE ANTI-SLAPP ACT OF 1997

4-21-1001. Short title.

This part shall be known and may be cited as the "Tennessee Anti-Slapp Act of 1997."

History.
Acts 1997, ch. 403, § 1.

4-21-1002. Legislative intent and findings.

(a) It is the intent of the general assembly to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies. Information provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government.

(b) The general assembly finds that the threat of a civil action for damages in the form of a "strategic lawsuit against political participation" (SLAPP), and the possibility of considerable legal costs, can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. SLAPP suits can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for redress of grievances.

History.
Acts 1997, ch. 403, § 2.

4-21-1003. Immunity from SLAPP suits — Exceptions — Costs.

(a) Any person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

(b) The immunity conferred by this section shall not attach if the person communicating such information:

(1) Knew the information to be false;

(2) Communicated information in reckless disregard of its falsity; or

(3) Acted negligently in failing to ascertain the falsity of the information if such information pertains to a person or entity other than a public figure.

(c) A person prevailing upon the defense of immunity provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

History.
Acts 1997, ch. 403, § 3.

4-21-1004. Intervention by agency or attorney general and reporter.

(a) In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under § 4-21-1003 may intervene and defend against any suit precipitated by the communication to the agency. In the event that a local government agency does not intervene in and defend against a suit arising from any communication protected under this part, the office of the attorney general and reporter may intervene in and defend against the suit.

(b) An agency prevailing upon the defense of immunity provided for in § 4-21-1003 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish such defense, the party bringing such action shall be entitled to recover from the agency costs and reasonable attorneys' fees incurred in proving the defense inapplicable or invalid.

History.
Acts 1997, ch. 403, § 4.

CHAPTER 22

STATE OWNED MOTOR VEHICLE FLEETS

Section
4-22-101. Plans to reduce use of petroleum products.
4-22-102. Modified vehicles.

4-22-101. Plans to reduce use of petroleum products.

(a) All state agencies, universities, and community colleges that have state owned motor vehicle fleets consisting of more than ten (10) motor vehicles shall develop and implement plans to increase the state's use of alternative fuels, synthetic lubricants, and energy-efficient motor vehicle or low-emission vehicles. Each entity's plan shall have a goal of reducing or displacing at least twenty percent (20%) of the current petroleum products consumed by each entity's motor vehicle fleet by January 1, 2015. All entities shall initiate plan implementation by January 1, 2014.

(b) Reductions may be met by displacing the use of petroleum or oils through the use of biodiesel, ethanol, synthetic oils or lubricants, or other alternative fuels; the use of hybrid electric vehicles, natural gas vehicles, propane vehicles or other energy-efficient motor vehicle or low-emission vehicles; or additional methods that reduce harmful emissions as may be approved by the department of general services, thereby reducing the amount of harmful emissions.

(c) No plan shall impede mission fulfillment of the entity and every plan shall allow for changes in vehicle usage and total miles driven and provide exceptions for technological or budgetary limitations and emergencies. Technological exceptions may include, but not be limited to, that the entity's

vehicles will be operating primarily in an area in which there is no refueling station established for alternative fuels.

(d) For purposes of this section:

(1) "Energy-efficient motor vehicle" means a passenger motor vehicle that is:

(A) An alternative fuel vehicle as defined by the Energy Policy Act of 1992 (P.L. 102-486);

(B) A flexible fuel vehicle (FFV) utilizing ethanol, biodiesel, or any other commercially available alternative fuel approved by the United States department of energy;

(C) A hybrid-electric vehicle (HEV);

(D) A compact fuel-efficient vehicle, defined as a vehicle powered by unleaded gasoline that has a United States EPA estimated highway gasoline mileage rating of at least twenty-five miles per gallon (25 mpg) or greater for the model year purchased;

(E) An electric vehicle (EV);

(F) A vehicle powered by natural gas or propane; or

(G) A vehicle powered by ultra low sulfur diesel fuel that meets Bin 5, Tier II emission standards mandated by the EPA and that has an EPA estimated highway mileage rating of at least thirty miles per gallon (30 mpg) or greater for the model year purchased; and

(2) "Motor vehicle" means a self-propelled vehicle licensed for highway use.

History.
Acts 2007, ch. 489, § 1; 2013, ch. 228, §§ 1, 2; 2013, ch. 423, §§ 3, 6; 2014, ch. 591, §§ 3, 4.

Compiler's Notes.
Acts 2013, ch. 423, § 1 provided that the act, which amended this section, shall be known and may be cited as the "Energy Independence Act of 2013."

For the Preamble to the act concerning alternative fuel vehicles and fueling infrastructure, please refer to Acts 2013, ch. 423.

4-22-102. Modified vehicles.

If an entity has, as part of the entity's motor vehicle fleet, motor vehicles that have been modified from the vehicles' original construction for an educational, emergency services, or public safety use or motor vehicles that are used for emergency services or law enforcement purposes, then the entity shall provide for a reduction or displacement of at least ten percent (10%) of the current petroleum products consumed by those motor vehicles in the entity's reduction and displacement plan.

History.
Acts 2007, ch. 489, § 2.

CHAPTER 23

EXECUTIVE RESIDENCE PRESERVATION

Part 1. Tennessee Residence Foundation

Section

4-23-101. Board of directors — Creation of foundation.

Part 2. Tennessee Residence Commission Act of 2010

Section
4-23-201. Short title.
4-23-202. Creation — Membership — Chair — Compensation and reimbursement — Policy regarding conflicts of interest.
4-23-203. Powers and duties.
4-23-204. Staffing — Contracting for services of experts and specialists.

PART 1

TENNESSEE RESIDENCE FOUNDATION

4-23-101. Board of directors — Creation of foundation.

(a) The Tennessee residence foundation shall exercise its powers through a board of directors composed of seven (7) members as provided by this section. The spouse of the governor or the governor's designee, if the governor is not married, shall serve on the board of directors. Three (3) additional members, one (1) from each grand division, shall be appointed to the board by the governor. The chair of the Tennessee state museum foundation board shall serve on the board of directors for the Tennessee residence foundation. Two (2) additional members, selected by the governor from the membership of the Tennessee state museum foundation board, shall be appointed by the Tennessee state museum foundation board to serve on the board for the Tennessee residence foundation. In the event the Tennessee state museum foundation ceases to exist, its appointees shall be filled by appointments made by the governor. The members of the board for the Tennessee residence foundation shall receive no compensation for their service, but shall be entitled to reimbursement for reasonable travel expenses incurred in the performance of official duties. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(b) The term for any member of the board appointed or selected by the governor shall be coterminous with the term of office of such governor, except that any member may be reappointed. Each director shall serve until a successor is appointed. If a vacancy occurs on the board, it shall be filled by the governor in accordance with this chapter.

(c) The board of directors shall designate one (1) director to serve as president for a one-year term. The board shall also elect to a one-year term of office a vice president and a secretary and such other officers as it deems necessary to perform the business of the foundation.

(d) The board of directors, established in this chapter and acting on behalf of the foundation, is hereby authorized and empowered to expend for the purposes of this chapter any funds appropriated, received by or allocated to the foundation.

(e) The foundation established pursuant to chapter 443 of the Public Acts of 1974, shall no longer have any duties or responsibilities with regard to the executive residence.

(f) The board of directors created under this section shall prepare, consistent with the terms of this section, the appropriate documents to create a

foundation and file the same with the proper state and federal agencies. In addition, such board shall prepare bylaws consistent with the terms of this section.

(g) In addition to any other powers conferred by this part, the Tennessee residence foundation created in this section is authorized to raise and spend funds for the renovation, restoration, reconstruction, expansion and upkeep of the executive residence.

History.
Acts 1974, ch. 443, § 3; T.C.A., § 4-2303; Acts 1999, ch. 212, § 1; 2004, ch. 548, § 1; 2005, ch. 267, §§ 1, 2; T.C.A. § 4-23-103.

Code Commission Notes. Former §§ 4-3-101 and 4-3-102 (Acts 1974, ch. 443, §§ 1,2; T.C.A. §§ 4-2301, 4-2302), concerning the Tennessee Executive Residence Preservation Foundation and its powers, placement of articles and approval of the governor, were deemed obsolete and were deleted by the code commission in 2005.

This section was renumbered from § 4-23-103 to § 4-23-101 by the authority of the Code Commission in 2021.

Compiler's Notes.
Acts 1974, ch. 443, referred to in this section, was codified as former §§ 4-23-101 and 4-23-102 and § 4-23-103. Former §§ 4-23-101 and 4-23- 102 were deleted by the code commission as obsolete in 2005 and former § 4-23-103 was renumbered as this section § 4-23-101 in 2021.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

Attorney General Opinions.
Tennessee executive residence preservation foundation. OAG 11-41, 2011 Tenn. AG LEXIS 43 (5/5/11).

PART 2

TENNESSEE RESIDENCE COMMISSION ACT OF 2010

4-23-201. Short title.

This part shall be known and may be cited as the "Tennessee Residence Commission Act of 2010."

History.
Acts 2010, ch. 1111, § 2.

4-23-202. Creation — Membership — Chair — Compensation and reimbursement — Policy regarding conflicts of interest.

(a)(1) There is hereby created the Tennessee residence commission, which shall be composed of six (6) voting, ex officio members, as follows: the governor, the first spouse, the commissioner of general services, the state architect, the chair of the Tennessee historical commission and the executive director of the Tennessee state museum, or their respective designees.

(2) The commission membership shall also include four (4) private citizens appointed by the governor to staggered terms of four (4) years. One (1) member shall serve an initial term of one (1) year, one (1) member shall serve an initial term of two (2) years, one (1) member shall serve an initial term of three (3) years, and one (1) member shall serve an initial term of four (4) years. All citizen members shall be voting members of the commission. In appointing private citizens to serve on the Tennessee residence commission, the governor shall strive to ensure that at least one (1) such citizen serving on the commission is sixty (60) years of age or older, that at least one (1) such citizen serving on the commission is a member of a racial minority, and that

at least one (1) such citizen is a resident of the City of Oak Hill. In addition to all other requirements for membership on the commission, all persons appointed or otherwise named to serve as members of the commission shall be residents of this state.

(b) The governor shall appoint a chair from among the full membership of the commission.

(c) All members shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d)(1) The commission shall adopt and implement a policy related to conflicts of interest, to ensure that all members avoid any situation that creates an actual or perceived conflict of interest related to the work of the commission. Such policy related to conflicts of interest shall be implemented within six (6) months of the final appointment of a member to the commission.

(2) The commission shall adopt and implement a policy of ethical considerations to ensure all members operate in a manner that is free from actual or perceived inappropriate actions. Such policy of ethical considerations shall be implemented within six (6) months of the final appointment of a member to the commission.

(e) Six (6) members of the commission shall constitute a quorum.

History.
Acts 2010, ch. 1111, § 3.

Code Commission Note. Former subsection (f) concerning the termination of the Tennessee residence commission on June 30, 2012, has been deleted as obsolete by the Code Commission in 2015, due to the extension of the commission.

Compiler's Notes.
The Tennessee residence commission, created by this section, shall terminate effective June 30, 2022. See §§ 4-29-112, 4-29-243.

4-23-203. Powers and duties.

(a) The Tennessee residence commission shall have the following powers and duties:

(1) Formulate and develop a plenary master plan and program for the adaptive restoration and preservation of the Tennessee residence, including the building and contiguous grounds;

(2) Consistent with the master plan required in subdivision (a)(1), establish policies governing any improvements, alterations, repairs, replacements, or reconstruction of the residence, its appurtenant buildings, and its grounds, including furniture and fixtures;

(3) Establish rules and policies governing the acquisition of furniture and fixtures, including, but not limited to, carpets, rugs, paintings, draperies, and objects of art, for the public quarters of the residence;

(4) Establish rules and policies to ensure that the private quarters of the executive residence are maintained appropriately;

(5) Establish rules and policies governing maintenance of the Tennessee residence; and

(6) Establish rules and policies governing the use of the Tennessee residence for any nongovernmental activities.

(b) The commission shall report in writing its progress on the formulation and development of the master plan and program required by subsection (a) to the state building commission, the speaker of the senate, and the speaker of the house of representatives no later than February 1 of each year, until such master plan and program have been completed.

History.
Acts 2010, ch. 1111, § 4.

4-23-204. Staffing — Contracting for services of experts and specialists.

(a) The department of general services, the state museum, the Tennessee historical society, and the office of the state architect shall provide appropriate staff assistance to the Tennessee residence commission.

(b) In addition, the commission has the authority to contract pursuant to state law for the services of experts and specialists in the area of adaptive restoration and preservation of historic buildings. All contracts shall be executed by the commissioner of finance and administration, with the approval of the comptroller of the treasury and the attorney general and reporter; provided, that design and construction contracts are subject to the approval of the state building commission.

History.
Acts 2010, ch. 1111, § 5.

CHAPTER 24

FIREFIGHTING TRAINING AND STANDARDS

Part 1. Commission on Firefighting Personnel Standards and Education

Section
4-24-101. Creation.
4-24-102. Recommendations to governor and general assembly.
4-24-103. Quorum — Officers.
4-24-104. Members.
4-24-105. Per diem payments and expenses.
4-24-106. Duties.
4-24-107. Powers.
4-24-108. Local governments — Powers unaffected.
4-24-109. Funds.
4-24-110. Assistance to local firefighters — Examination and administration.
4-24-111. Domestic violence training.
4-24-112. Minimum training requirements.
4-24-113. Administrative functions of the director of the division of fire prevention.

Part 2. Salary Supplements

4-24-201. Part definitions.
4-24-202. Pay supplement for completing in-service training course — Eligibility.
4-24-203. Funding.
4-24-204. Equal opportunity for training.
4-24-205. Minimum employment and training standards.

Part 3. Adequate Facilities in Fire Station

4-24-301. Separate facilities in new construction for men and women.
4-24-302. Gender-friendly conditions in existing facilities.

Section
4-24-303. Existing facilities that cannot be upgraded.

Cross-References.
Volunteer Firefighters and Rescue Squad Week, § 15-2-121.

PART 1

COMMISSION ON FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

4-24-101. Creation.

(a) There is hereby created the commission on firefighting personnel standards and education.

(b) The commission shall be attached to the department of commerce and insurance, division of fire prevention, and the division shall serve as a fiscal agent for the commission.

History.
Acts 1974, ch. 726, § 1; 1976, ch. 706, § 1; T.C.A., § 4-2401; Acts 2012, ch. 986, § 41.

Compiler's Notes.
The regulatory board created by this section is attached to the division of regulatory boards in the department of commerce and insurance for purposes of administration. See §§ 4-3-1304 and title 56, ch. 1, part 3.

The Commission on firefighting personnel standards and education, created by this section, terminates June 30, 2025. See §§ 4-29-112, 4-29-246.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Attorney General Opinions.
The authority to certify firefighters is vested exclusively in the commission on firefighting personnel standards and education; the Fire Service and Codes Enforcement Academy cannot provide such certification, OAG 01-008, 2001 Tenn. AG LEXIS 10 (1/25/01).

4-24-102. Recommendations to governor and general assembly.

The commission shall recommend to the governor and the general assembly standards of performance, courses of instruction and training, and procedures for certifying levels of achievement for full-time municipal and volunteer firefighters.

History.
Acts 1974, ch. 726, § 2; 1979, ch. 258, § 1; T.C.A., § 4-2402.

Attorney General Opinions.
The authority to certify firefighters is vested exclusively in the commission on firefighting personnel standards and education; the Fire Service and Codes Enforcement Academy cannot provide such certification, OAG 01-008, 2001 Tenn. AG LEXIS 10 (1/25/01).

4-24-103. Quorum — Officers.

(a) Five (5) members shall constitute a quorum.

(b) In July of each even-numbered year, the commission shall elect from its membership a chair, a vice chair, and a secretary.

History.
Acts 1974, ch. 726, § 3; T.C.A., § 4-2403.

4-24-104. Members.

(a) The commission shall be composed of nine (9) members, appointed by the governor as provided in this section. The commissioner of commerce and insurance and the executive director of the fire service and codes enforcement academy shall be ex officio nonvoting members.

(b)(1) Each appointed member, with the exception of volunteer members, shall be qualified by experience in the area of fire protection and related fields, meet the minimum training requirements of § 4-24-112, be a certified firefighter II or above, and be an active or retired member of a fire department currently participating in the commission's certification training program.

(2) Each appointed volunteer member shall be qualified by experience; extinguish and control fires and fire-related emergencies as a member of a volunteer fire department recognized under title 68, chapter 102, part 3; meet the minimum training requirements of § 4-24-112; currently serve or has served as a training officer for a fire department; and not be considered a full-time employee of the fire department that they are representing.

(c)(1) Three (3) members appointed to the commission shall be selected from candidates submitted collectively by the Tennessee Fire Chief's Association, the Tennessee Fire Safety Inspectors Association, and the Tennessee Fireman's Association. One (1) of the members appointed pursuant to this subdivision (c)(1) shall be a volunteer firefighter.

(2) Three (3) members appointed to the commission shall be selected from candidates submitted by the governing body of the Tennessee Professional Firefighters Association.

(3) Three (3) members appointed to the commission shall be appointed by the governor. One (1) appointment shall be a career firefighter and one (1) appointment shall be a volunteer firefighter.

(4) The appointments shall be made in accordance with the following procedure:

(A) Within two (2) weeks after the occurrence of a vacancy in the office of any commissioner caused by death, resignation, disability, or forfeiture of office, and no later than thirty (30) days prior to the expiration of the term of office of any incumbent commissioner, the chair of the commission shall notify the appropriate association of the vacancy or expiration of the term when the vacancy or expiration results in an opening for that particular association to make recommendations for an appointment;

(B) Within twenty-one (21) days after the receipt of such notice, the governing body of the association may submit to the governor a list of three (3) qualified nominees to fill such vacancy, in order of preference;

(C) Within twenty-one (21) days after the submission of the list or after the time for submission of the list has expired, the governor may appoint

one (1) of the nominees for the remainder of the term, or for the next term, as the case may be; provided, that the governor may reject all nominees by written objection mailed to the association within the twenty-one-day period, in which event the governing board of the association shall have twenty-one (21) days from receipt of the written objection within which to submit a second list of three (3) appointees in order of preference, and the governor may likewise reject all such nominees by written objection in the manner provided in this subdivision (c)(4)(C), in which event the procedure of objection by the governor and certification of additional names by the governing body of the association shall continue until the position is filled;

(D) In the event the governor fails to exercise the governor's executive power or power to object within the applicable twenty-one-day period, then the first name listed on the last list of recommended nominees shall be the appointee by operation of law; and

(E) In the event the governing body of the association fails to submit a list of qualified nominees as provided in this subsection (c), the governor may proceed to appoint a person meeting the qualifications for the position.

(d) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person appointed to serve on the commission is sixty (60) years of age or older and that at least one (1) person appointed to serve on the commission is a member of a racial minority.

(e) Commission members shall be appointed for six-year terms.

(f) The governor shall fill by appointment vacancies occurring during terms.

(g) Each grand division shall be represented on the commission.

(h) A member whose term expires shall continue to serve on the commission until a new member is appointed.

(i) With the exception of the executive director of the fire service and codes enforcement academy or the executive director's designee, who serves as a nonvoting member and whose attendance does not count towards a quorum, no state employee, including full-time and part-time employees, shall be appointed to serve on the commission. This subsection (i) shall not affect the terms of the members of the commission appointed prior to April 11, 2007, but all appointments made on or after April 11, 2007, shall meet the requirements established in this subsection (i).

History.

Acts 1974, ch. 726, § 4; 1979, ch. 258, § 2; T.C.A., § 4-2404; Acts 1986, ch. 824, § 1; 1988, ch. 1013, § 7; 2003, ch. 249, § 1; 2004, ch. 427, § 1; 2007, ch. 16, § 1; 2010, ch. 1150, § 1.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

Attorney General Opinions.

It does not present any conflict of interest for an instructor at the fire service and codes academy to serve on the commission on fire fighting personnel standards commission, OAG 06-114, 2006 Tenn. AG LEXIS 123 (7/19/06).

4-24-105. Per diem payments and expenses.

(a)(1) Commission members shall receive a per diem payment for each day of attendance at a local firefighting unit pursuant to § 4-24-110, or a meeting of the commission pursuant to § 4-24-107, in the amount of fifty dollars

($50.00) per day of attendance.

(2) Members shall receive a prorated share of such per diem payment for less than a full day's attendance.

(b) A travel and expense allowance, consistent with state travel policy, shall be paid from the member's home to the location of the firefighting unit, or meeting of the commission, and return.

(c) The payment of such per diem and travel allowance expense shall be subject to funding being available in the budget of the commission for the fiscal year in which such payments are made.

History.

Acts 1974, ch. 726, § 5; 1976, ch. 706, § 2; 1976, ch. 806, § 1(26); T.C.A., § 4-2405; Acts 1981, ch. 227, § 1; 1984, ch. 676, § 1; 2004, ch. 858, §§ 1-3.

Cross-References.

Commissioner to promulgate rules and regulations, § 4-24-110.

Per diem and travel expenses of members, § 56-1-307.

Attorney General Opinions.

Per diem for members of commission on firefighting personnel standards and education, OAG 03-079, 2003 Tenn. AG LEXIS 97 (6/20/03).

4-24-106. Duties.

The commission shall:

(1) Certify firetraining instructors;

(2) Certify training and education programs prescribed by the commission;

(3) Recommend and approve curricula for advanced courses and seminars in fire science, fire engineering and training in institutions of higher education or other state supported schools;

(4) Approve all fire services curricula offered through the Tennessee fire services and codes enforcement academy;

(5) Establish classifications based on training and education for full-time or volunteer fire service personnel who desire to be certified and who successfully pass the examination given by the commission; and

(6) Administer the educational incentive provided in part 2 of this chapter.

History.

Acts 1974, ch. 726, § 6; 1979, ch. 258, § 3; T.C.A., § 4-2406; Acts 1988, ch. 1003, § 1; 2004, ch. 427, §§ 2, 3; 2007, ch. 237, § 1.

Cross-References.

Recommendations to governor, general assembly, § 4-24-102.

Attorney General Opinions.

The authority to certify firefighters is vested exclusively in the commission on firefighting personnel standards and education; the Fire Service and Codes Enforcement Academy cannot provide such certification, OAG 01-008, 2001 Tenn. AG LEXIS 10 (1/25/01).

4-24-107. Powers.

The commission may:

(1) Meet at such times and places in the state as may be needed, upon call of the chair or upon the request of five (5) members;

(2) Contract with other agencies, public or private, or persons as it finds necessary for cooperation with city, county, state and federal agencies for training programs;

(3) Make reasonable rules and regulations for the implementation of objectives established in this part;

(4) Employ a director for the purpose of full implementation of this chapter;

(5) Prepare a standard examination to test the levels of training and education of applicants for certification and establish a passing grade therefor;

(6) Develop standards and programs for the administration and distribution of the educational incentive to eligible firefighters pursuant to part 2 of this chapter; and

(7) Certify individuals who are not currently firefighters but who complete a commission approved recruit training program.

History.
Acts 1974, ch. 726, § 7; 1976, ch. 706, § 3; 1979, ch. 258, § 4; T.C.A., § 4-2407; Acts 1988, ch. 1003, § 2; 2004, ch. 427, § 4; 2008, ch. 781, § 1; 2012, ch. 986, § 42.

Compiler's Notes.
Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Attorney General Opinions.
The authority to certify firefighters is vested exclusively in the commission on firefighting personnel standards and education; the Fire Service and Codes Enforcement Academy cannot provide such certification, OAG 01-008, 2001 Tenn. AG LEXIS 10 (1/25/01).

4-24-108. Local governments — Powers unaffected.

Nothing contained in this part shall be deemed to limit the powers, rights, duties and responsibilities of municipal or county governments.

History.
Acts 1974, ch. 726, § 8; T.C.A., § 4-2408.

4-24-109. Funds.

The commission shall operate only on funds appropriated by the general assembly.

History.
Acts 1974, ch. 726, § 9; T.C.A., § 4-2409.

4-24-110. Assistance to local firefighters — Examination and administration.

(a) Individual commission members may assist local firefighting units in the general area of their residence with the development of training and education programs for certification. Members may also administer examinations for certification if such administration is approved by the commission. Members shall receive a per diem payment for each day of attendance at a local firefighting unit as provided for in § 4-24-105, only if such attendance is in lieu of the attendance of a staff employee of the commission.

(b) The commission shall promulgate rules and regulations for the implementation of this section and § 4-24-105. Such rules and regulations shall become effective only upon the approval of the commissioner of commerce and insurance.

History.
Acts 1981, ch. 227, § 2.

Cross-References.
Rural fire protection equipment, title 4, ch. 31, part 5.

Attorney General Opinions.
Per diem for members of commission on firefighting personnel standards and education, OAG 03-079, 2003 Tenn. AG LEXIS 97 (6/20/03).

4-24-111. Domestic violence training.

The curriculum requirements of the commission on firefighting personnel standards and education shall include materials concerning domestic violence training.

History.
Acts 2001, ch. 3, § 2.

Cross-References.
Domestic abuse, title 36, ch. 3, part 6.

Domestic violence state coordinating council, title 38, ch. 12.

4-24-112. Minimum training requirements.

(a) Any full-time, part-time or volunteer firefighter hired or accepted as a firefighter on or after July 1, 2009, by a fire department recognized under title 68, chapter 102, part 3 must meet the following minimum training requirements:

(1) The firefighter must have previously completed or must complete after joining the fire department a minimum of sixteen (16) hours of initial training developed by the Tennessee fire service and codes enforcement academy in firefighting procedures and techniques or complete equivalent training approved by the Tennessee commission on firefighting personnel standards and education before being allowed to actively fight a fire; and

(2) Within thirty-six (36) months after hire or acceptance date as a firefighter, the firefighter must have completed, or must complete after joining the fire department, the basic and live firefighting course offered by the Tennessee fire service and codes enforcement academy or an equivalent course.

(b) The following firefighters are exempt from the training requirements of subsection (a):

(1) Any firefighter in the fire service on July 1, 2009, and who entered the fire service before June 30, 2004; and

(2) Any firefighter who is certified by a medical doctor as medically or physically unable to complete the training requirements; however, the fire department may not allow these firefighters to engage in active firefighting operations.

(c) Any firefighter who is certified by the fire department's chief officer that they will not operate within an environment determined to be immediately dangerous to life and health (IDLH) is exempt from the live firefighting portion of the training referenced in subdivision (a)(2).

(d) Any firefighter in the fire service on July 1, 2009, and who was hired or accepted as a firefighter between July 1, 2004, and June 30, 2009, has until July 1, 2012, to show proof of completion of the minimum training requirements of this section.

(e) The commission on firefighting personnel standards and education may issue any rules and take any other administrative action necessary to implement this section.

(f) The governmental unit, person, organization, agency or entity that obtained a certificate of recognition from the state fire marshal's office for the fire department is authorized to determine whether it or the firefighter shall be responsible for paying any fees charged for or associated with obtaining the training required under this section.

(g)(1) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census, nor to municipalities located within such counties:

not less than	nor more than
7,600	7,700
8,050	8,100
11,025	11,100
11,300	11,368
16,000	16,100
17,475	17,575
17,600	17,675
17,700	17,775
17,800	17,875
17,900	18,000
20,600	20,700
22,200	22,300
29,400	29,450
29,800	29,900
39,900	40,000

unless the governing body of any such county or of a municipality located in any such county adopts a resolution of its governing body to apply such requirements within the jurisdictional boundaries of their respective municipality or county, as appropriate; provided, that any action by the county legislative body concerning the implementation of this subdivision (g)(1) shall be limited to the jurisdictional boundaries outside any municipality located within the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county or of a municipality located in any such county that has taken the action pursuant to subdivision (g)(1) is authorized to reverse such action by adopting a resolution to exempt their municipality or county from the application of this section within the jurisdictional boundaries of the municipality or county, as appropriate; provided, that any action by the county legislative body concerning its actions shall be limited to the jurisdictional boundaries outside any municipality located within the county. The presiding officer of the governing body

shall notify the state fire marshal of the approval of the resolution.

(3) Notwithstanding any other law to the contrary, if a firefighter located in a county or a municipality located within a county to which chapter 661 of the Public Acts of 2010 applies is exempt from meeting the minimum training requirements established pursuant to this section, then the pay supplement authorized pursuant to § 4-24-202 for firefighters completing the in-service training course shall not be available to such a firefighter unless the firefighter meets the minimum training requirements established pursuant to this section.

(4) Notwithstanding any other law to the contrary, if a firefighter located in a county or a municipality located within a county having a population of not less than seventeen thousand seven hundred (17,700) nor more than seventeen thousand seven hundred seventy-five (17,775), according to the 2000 federal census or any subsequent federal census, is exempt from meeting the minimum training requirements established pursuant to this section, then the pay supplement authorized pursuant to § 4-24-202 for firefighters completing the in-service training course shall not be available to such a firefighter unless the firefighter meets the minimum training requirements established pursuant to this section.

(h)(1) This section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality, in counties having a population of not less than eighty seven thousand nine hundred (87,900) nor more than eighty-eight thousand (88,000), according to the 2000 federal census or any subsequent federal census, unless the governing body of any such county adopts a resolution to apply such requirements within the jurisdictional boundaries of the county outside any municipality located within the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (h)(1) is authorized to reverse such action by adopting a resolution to exempt their county from the application of this section within the jurisdictional boundaries of the county outside any municipality located within the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(i) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census, nor to municipalities located within such counties:

not less than	nor more than
12,300	12,368
46,800	46,900

(j)(1) Except as provided in subdivision (j)(2), this section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality in any county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census.

(2) This section shall not apply to any city having a population of not less than two thousand twenty (2,020) nor more than two thousand thirty (2,030), according to the 2000 federal census or any subsequent federal census.

(k)(1) This section shall not apply in the unincorporated areas, outside the municipal boundaries of any municipality, in counties having the following populations, according to the 2000 federal census or any subsequent federal census:

not less than	nor more than
4,900	5,000
7,975	8,025
16,600	16,700
19,500	19,775
20,100	20,200
21,100	21,200
39,050	39,150

unless the governing body of any such county adopts a resolution of its governing body to apply such requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (k)(1) is authorized to reverse the action by adopting a resolution to exempt the county from the application of this section within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(*l*)(1) This section shall not apply in any county having a population of not less than forty-nine thousand (49,000) nor more than forty-nine thousand one hundred (49,100), according to the 2000 federal census or any subsequent federal census, unless the governing body of any such county adopts by a two-thirds (⅔) vote a resolution to apply such requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (*l*)(1) is authorized to reverse such action by adopting a resolution to exempt their county from the application of this section. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(m)(1) This section shall not apply in counties having the following populations, according to the 2000 federal census or any subsequent federal census:

not less than	nor more than
7,200	7,300
12,826	12,900

unless the governing body of any such county adopts a resolution of its

governing body to apply the requirements within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(2) The governing body of any such county that has taken the action pursuant to subdivision (m)(1) is authorized to reverse such action by adopting a resolution to exempt the county from the application of this section within the jurisdictional boundaries of the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

(n) This section shall not apply in counties having a population, according to the 2000 federal census or any subsequent federal census, of:

not less than	nor more than
6,700	6,800
7,900	7,970
11,700	11,800
16,500	16,575

(*o*) The legislative body of any municipality or county that has been exempted from this section may adopt a resolution by a two-thirds (⅔) vote to make this section applicable within the jurisdictional boundaries of their respective municipality or county, as appropriate; provided, that any action by the county legislative body concerning the action shall be limited to the jurisdictional boundaries outside any municipality located within the county. The presiding officer of the governing body shall notify the state fire marshal of the approval of the resolution.

History.

Acts 2009, ch. 512, §§ 1, 3-5; 2010, ch. 661, §§ 1-3; 2010, ch. 1028, §§ 1-14; 2010, ch. 1039, §§ 1, 2; 2013, ch. 310, § 1.

Compiler's Notes.

Certain sections of Acts 2009, ch. 512 that completely exempted a county from the act by action of the senate were excluded from codification because later actions by the house of representatives excluded the same counties but granted an opt-in provision, and the senate concurred in those actions by the house of representatives.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

4-24-113. Administrative functions of the director of the division of fire prevention.

(a) Notwithstanding any law to the contrary, the director of the division of fire prevention shall:

(1) Act as chief administrative officer for the commission;

(2) Employ all consultants, investigators, inspectors, legal counsel and other personnel necessary to staff and carry out the functions of the commission, and assign the personnel in a manner designed to assure their most efficient use;

(3) Provide office space and necessary quarters for the commission;

(4) Maintain a central filing system for official records and documents of the commission;

(5) Promulgate rules and regulations for all administrative functions and

activities of the commission;

(6) Enforce all regulations promulgated by the commission;

(7) Collect and account for all fees prescribed to be paid to the commission, and, unless otherwise prescribed by law, deposit the fees in the state treasury, and the commissioner of finance and administration shall make allotments out of the general fund as may be necessary to defray the expenses of the commission as provided by law; and

(8) Perform other duties the commissioner prescribes, or as prescribed by law.

(b) In providing the administrative functions, the director shall consult with the commission, but the decision of the director in such matters shall be conclusive, except as otherwise directed by the commissioner.

History.

Acts 2012, ch. 986, § 43.

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

PART 2

SALARY SUPPLEMENTS

4-24-201. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commission" means the commission on firefighting personnel standards and education created by this chapter;

(2) "Fire department" means a department of a municipality, county, or political subdivision, or an organization, agency, or entity that offers its services, for or without pay, for the purpose of suppressing fires, performing rescue services, or for other emergency response purposes. "Fire department" does not mean law enforcement agencies, emergency medical agencies licensed by the Tennessee emergency medical services board, and rescue squads that do not provide fire protection;

(3) "Firefighter" means a person in the employ of a unit of government fire department that is registered and recognized by the state fire marshal and is required to extinguish and control fires or fire-related incidents; and

(4) "Volunteer firefighter" means a person who volunteers with a county, municipal, or nonprofit fire department that is registered and recognized by the state fire marshal and who is required to extinguish and control fires or fire-related incidents.

History.

Acts 1975, ch. 268, § 1; T.C.A., § 4-2410; Acts 1986, ch. 534, § 1; 2004, ch. 427, § 8; 2021, ch. 478, § 1.

Amendments.

The 2021 amendment rewrote the section, which read: "As used in this part, unless the context otherwise requires:

"(1) 'Commission' means the commission on firefighting personnel standards and education created by this chapter;

"(2) 'Firefighter' means any person in the employ of a unit of government who is a member of the fire department of such unit, is trained in firefighting or prevention of fires, and is actively engaged in such work, and whose primary livelihood is derived from such work; and

"(3) 'Unit of government' means any county, municipality, the state of Tennessee or any political subdivision or agency thereof, employing firefighters, all of whom must meet the minimum employment standards established by the commission."

Effective Dates.

Acts 2021, ch. 478, § 3. July 1, 2021; provided that for purpose of promulgating rules, the act took effect May 18, 2021.

4-24-202. Pay supplement for completing in-service training course — Eligibility.

(a)(1) A fire department with employed firefighters who successfully complete in each year an in-service training course, appropriate to the firefighter's rank and responsibility and the size and location of the firefighter's department, of at least forty (40) hours duration at a school certified or established by the commission is entitled to receive a pay supplement of eight hundred dollars ($800) from the commission to be paid to the firefighter in addition to the firefighter's regular salary.

(2) A fire department with volunteer firefighters who successfully complete in each year an in-service training course, appropriate to the volunteer firefighter's rank and responsibility and the size and location of the volunteer firefighter's department, of at least thirty (30) hours duration at a school certified or established by the commission is entitled to receive payment of six hundred dollars ($600) from the commission to be paid to the volunteer firefighter in addition to the volunteer firefighter's other compensation.

(3) A person is only eligible to receive payment under subdivision (a)(1) or (a)(2), whichever is greater, for successful completion of the person's annual in-service course.

(b) Any or all firefighters shall be eligible for such educational incentive upon satisfactory completion, as determined by the commission, of forty (40) hours of such training in each year.

(c)(1) Notwithstanding any law, rule or regulation to the contrary, any firefighter who served on active duty in the armed forces of the United States during either the Desert Storm or Desert Shield Operations shall receive the cash salary supplement provided pursuant to this section, if such service prevented such firefighter from attending the in-service training program pursuant to this section. The provisions are retroactive in application.

(2) In addition, any firefighter who served or serves on active duty in the armed forces of the United States during Operation Enduring Freedom or any other period of armed conflict prescribed by presidential proclamation or federal law that occurs following the period involving Operation Enduring Freedom shall receive the cash salary supplement provided pursuant to this section, if such service prevented or prevents such firefighter from attending the in-service training program pursuant to this section.

History.

Acts 1975, ch. 268, § 2; T.C.A., § 4-2411; Acts 1988, ch. 1003, § 3; 1992, ch. 588, § 3; 2003, ch. 289, § 1; 2004, ch. 427, § 5; 2007, ch. 567, § 1;

2019, ch. 152, § 1; 2021, ch. 478, § 2.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Amendments.

The 2021 amendment, in (a)(1), substituted "A fire department with employed" for "Any unit of government with" and "is entitled" for "shall be entitled"; and added (a)(2) and (3).

Effective Dates.

Acts 2021, ch. 478, § 3. July 1, 2021; provided that for purposes of promulgating rules, the act took effect May 18, 2021.

Attorney General Opinions.

Eligibility of fire fighters called to active military duty for vacation and sick leave; eligibility of police officers, fire fighters, and sheriff's deputies called to active military duty for supplemental pay, OAG 92-12, 1992 Tenn. AG LEXIS 12 (2/19/92).

4-24-203. Funding.

Funds made available under this part to units of government shall be received and expended as follows:

(1) Funds shall be used only as a cash salary bonus supplement to firefighters;

(2) Each firefighter shall be entitled to receive the educational incentive that such firefighter's qualifications brought to such unit;

(3) Funds provided shall not be used to supplant existing salaries or as substitutes for normal salary increases periodically due to firefighters; and

(4) In accordance with rules and regulations of the commission.

History.

Acts 1975, ch. 268, § 4; T.C.A., § 4-2413; Acts 2004, ch. 427, § 6.

4-24-204. Equal opportunity for training.

All units of government are hereby expressly prohibited from discriminating against any firefighter by interfering with or denying any firefighter the opportunity to participate in any training or educational program established by such unit of government for the purpose of compliance with this part.

History.

Acts 1975, ch. 268, § 5; T.C.A., § 4-2414.

4-24-205. Minimum employment and training standards.

The commission is empowered to establish minimum employment and training standards for firefighters who are to be eligible for educational incentives.

History.

Acts 1975, ch. 268, § 6; T.C.A., § 4-2415; Acts 2004, ch. 427, § 7.

PART 3

ADEQUATE FACILITIES IN FIRE STATION

4-24-301. Separate facilities in new construction for men and women.

With respect to any fire station constructed after June 26, 2007, each

municipal or county fire department, and each volunteer fire department or company is encouraged to have separate restroom facilities, showers and locker rooms for men and women.

History.
Acts 2007, ch. 527, § 2.

Compiler's Notes.
For the Preamble to the act regarding adequate fire station facilities, please refer to Acts 2007, ch. 527.

4-24-302. Gender-friendly conditions in existing facilities.

(a) Each municipal or county fire department, and each volunteer fire department or company, are urged to develop plans that, to the greatest extent possible, will create gender-friendly conditions in existing facilities.

(b) The purpose of the plans is to identify which stations could be upgraded to accomplish a gender-friendly facility and identify which stations cannot be made gender-friendly due to space constraints, historical significance of the station, or other documented reasons why this could not be accomplished.

(c) The plans, once developed, shall be made available upon request by the commission on firefighting personnel standards and education and from interested persons in the community.

History.
Acts 2007, ch. 527, § 3.

4-24-303. Existing facilities that cannot be upgraded.

Existing facilities that cannot be upgraded to gender-friendly stations should be made gender-friendly to the greatest extent possible by:

(1) Using empty or unused rooms in the station. In no event shall existing rooms, including, but not limited to, bedrooms, weight rooms, T.V. rooms, or other rooms utilized by the firefighters for relaxation or rest, be taken or redesignated for purposes of complying with this part;

(2) With regard to restrooms, shower rooms or locker rooms, using a male/female flip sign with locks on the door when the room is being utilized by either a male or female. No restroom, shower room or locker room that is designated specifically for male or female may be used at any time by the opposite sex;

(3) With respect to sleeping arrangements created for the purpose of complying with this part, if it is not possible to have individual sleeping quarters, privacy for everyone shall be provided by installing individual cubicles in a room or rooms designated for sleeping with a curtain or screen blocking the entrance to each individual cubicle. The cubicles shall contain at least a bed, desk, lamp and a sufficient number of lockers to provide each firefighter on a shift with a designated, private area to rest or sleep.

History.
Acts 2007, ch. 527, § 4.

CHAPTER 25

[REPEALED]

Section
4-25-101 — 4-25-108. [Repealed.]

4-25-101 — 4-25-108. [Repealed.]

History.
Acts 1976, ch. 757, §§ 1-8; T.C.A., § 4-2501 — 4-2508; Acts 1982, ch. 563, § 1; repealed by Acts 2021, ch. 279, § 1, effective May 3, 2021.

Compiler's Notes.
Former chapter 25, §§ 4-25-101 — 4-25-108 concerned the paperwork reduction and simplification act of 1976.

CHAPTER 26

BUSINESS ENTERPRISE OFFICE

Section
4-26-101. Establishment.
4-26-102. Chapter definitions.
4-26-103. Powers and duties.
4-26-104. Purpose and construction.
4-26-105. Reports.
4-26-106. Disadvantaged business loan guarantee program.
4-26-107. Guidelines and reports to the government operations committees of the senate and house of representatives.

4-26-101. Establishment.

There is established within the department of economic and community development an office of business enterprise.

History.
Acts 1977, ch. 135, § 1; T.C.A., § 4-2601.

Compiler's Notes.
The office of business enterprise, created by this section, terminates June 30, 2026. See §§ 4-29-112, 4-29-247.

Attorney General Opinions.
Constitutionality of state surety program to assist disadvantaged businesses, OAG 88-102, 1988 Tenn. AG LEXIS 103 (5/19/88).

4-26-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Bid bond" means a bond conditioned upon the entering into a contract by a bidder, if the bidder receives the award thereof, and furnishing the prescribed payment bond and performance bond;

(2) "Commissioner" means the commissioner of economic and community development;

(3) "Department" means the department of economic and community development;

(4) "Director" means the director of the office of business enterprise;

(5) "Disability" means a physical impairment that, in the written opinion of a person's licensed physician, substantially limits one (1) or more of the major life activities of such person and is expected to continue to exist for

more than five (5) years. As used in this subdivision (5), "major life activities" means caring for oneself and performing manual tasks, which includes writing, walking, seeing, hearing, speaking, and breathing;

(6) "Disadvantaged business" means a business that is solely owned, or at least fifty-one percent (51%) of the outstanding stock of which is owned, by a person who is either:

(A) By reason of social background unable to obtain technical, business or financial assistance of a quality or quantity similar to that available to the average business;

(B) Impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex or service in the armed forces during the Vietnam war; provided, that it is not the policy of this state to encourage employment outside the home of mothers of minor children;

(C) Unable to compete effectively because of tendencies of regular financing and commercial organizations to restrict their services to established businesses;

(D) In a state of chronically low income because of long residence in an urban area with high unemployment and low income; or

(E) Impeded from normal entry into the economic mainstream because of a disability;

(7) "Obligee" means:

(A) In the case of a bid bond, the person requesting bids for the performance of a contract; or

(B) In the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond;

(8) "Payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with the principal;

(9) "Performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms;

(10) "Prime contractor" means the person with whom the obligee has contracted to perform the contract;

(11)(A) "Principal" means:

(i) In the case of a bid bond, a person bidding for the award of a contract; or

(ii) The person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of such person's obligation the surety is bound under the terms of a payment or performance bond;

(B) A principal may be a prime contractor or a subcontractor;

(12) "Subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract; and

(13) "Surety" means the person who:

(A) Under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond;

(B) Under the terms of a performance bond, undertakes to incur the

cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract; or

(C) Under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment.

History.

Acts 1977, ch. 135, § 2; T.C.A., § 4-2602; Acts 1987, ch. 369, § 2; 1993, ch. 488, § 1; 1994, ch. 767, §§ 1, 2.

Cross-References.

Fraudulent qualifying for set-aside contracts, § 39-14-137.

Local education associations, contracts with small businesses, minority owned businesses, § 49-3-322.

University and community college contracts with small businesses, minority owned businesses, § 49-8-114.

4-26-103. Powers and duties.

(a) The department is authorized to:

(1) Provide assistance to disadvantaged businesses by advising and counseling on all phases of procurement policies, by obtaining information concerning prime contractors in letting subcontracts and by encouraging the letting of subcontracts by prime contractors to disadvantaged businesses;

(2) Receive funding from sources other than the state;

(3) Make studies and conduct workshops, conferences and seminars, with owners and employees of disadvantaged businesses to enhance their understandings of business management, bidding, licensing procedures, procurement procedures and any other activities incident to their positions in business;

(4) Develop training and educational programs in cooperation with institutions, associations, and other state, local and federal agencies, and coordinate the training efforts of the various organizations presently providing technical assistance to disadvantaged businesses;

(5) Encourage and provide the direction and coordination necessary to secure franchises and dealerships from private firms for disadvantaged businesses;

(6) Review and evaluate legislation and determine its effect upon disadvantaged businesses and make appropriate recommendations to the governor and the general assembly;

(7) Employ such personnel as may be required to implement and administer this chapter; and

(8)(A) Develop sources of capital for minority entrepreneurs;

(B) Assist in setting up new minority banks, small business investment companies, as defined in 15 U.S.C. § 681(a), and minority enterprise small business investment companies, being the companies authorized in 15 U.S.C. § 681(d) [repealed]; and

(C) Develop loan packages to assist minority business persons in the start-up or expansion of businesses, or any other financial counseling necessary to enable minority business operations to operate on a sound financial basis.

(b)(1) The department shall continually evaluate the progress of disadvantaged businesses through monitoring and techniques of evaluation, such as

surveys and feasibility studies.

(2) The department shall maintain complete and consistent program data.

History.
Acts 1977, ch. 135, § 3; T.C.A., § 4-2603; Acts 1988, ch. 532, §§ 3, 4.

Compiler's Notes.
Section 15 U.S.C. § 681(d), referred to in this section was repealed by P.L. 104-208, Div D, Title II, § 208(b),110 Stat. 3009-741, effective September 30, 1996.

4-26-104. Purpose and construction.

This chapter shall be liberally construed to carry out the following purposes and objectives that:

(1) Disadvantaged businesses share in the American economic system of private enterprise through free and vigorous competition;

(2) Such competition be fostered through the encouragement and development of disadvantaged businesses; and

(3) The state aid, counsel and assist in every practical manner disadvantaged businesses in order to preserve free competition on equal terms with those businesses constituting the major part of the business community.

History.
Acts 1977, ch. 135, § 4; T.C.A., § 4-2604.

4-26-105. Reports.

(a) The department shall make a written report to the governor, the speaker of the senate, the speaker of the house of representatives, the chair of the commerce and labor committee of the senate, the chair of the commerce committee of the house of representatives, and any governor's advisory committee on minority economic development, at least once each year, such report to be made no later than December 1.

(b) The report shall advise the officials and committees mentioned in subsection (a) on the administration and operation of this chapter.

History.
Acts 1977, ch. 135, § 5; T.C.A., § 4-2605; Acts 2013, ch. 236, § 14; 2019, ch. 345, § 10.

4-26-106. Disadvantaged business loan guarantee program.

(a)(1) The general assembly finds that conventional funding sources for emerging and expanding disadvantaged businesses are limited or nonexistent.

(2) The general assembly further finds that promoting and encouraging economic opportunity and development within the state's minority community is a worthy public purpose.

(3) Such economic opportunity and development serve the health, safety and welfare of all citizens through creation of long-term employment opportunities, reduction of unemployment, diminished demand for costly social services and increased revenue collections.

(b)(1) There is created within the state treasury a restricted account not to exceed fifty thousand dollars ($50,000) to be known as the "disadvantaged business loan guarantee account."

(2) Amounts in the account at the end of any fiscal year shall not revert to the general fund but shall remain available to the department for the purposes set forth in this section.

(3) Amounts in the account shall be invested for the benefit of the account by the state treasurer pursuant to § 9-4-603. The account shall be administered by the commissioner.

(c)(1) There is created within the department the disadvantaged business loan guarantee program.

(2) The purpose of the loan guarantee program is to ensure the availability of conventional financial resources to emerging and expanding disadvantaged businesses by guaranteeing loans for disadvantaged businesses.

(3) To qualify for a loan guarantee, a disadvantaged business must demonstrate to the satisfaction of the commissioner that the loan will be fully repaid and will produce economic benefit for the community and state.

(4) The department is authorized to determine the total dollar amount of loans to be guaranteed, subject to a maximum of five (5) times the balance of appropriated funds within the loan guarantee account, plus income, less expenses associated with the program.

(5) The department is authorized to charge a premium to the borrower to help defray the cost of administering the program.

(6) The department may establish other terms and conditions for guarantees of loans.

(7) The total aggregate amount of the loan guarantee may not exceed eighty percent (80%) of any loan.

(8) All documentation evidencing a loan guarantee shall clearly state that such guarantee is an obligation of the disadvantaged business loan guarantee account and not of the general fund or the state of Tennessee, and that any amounts required to be paid pursuant to the loan guarantee are subject to the availability of sufficient funds within the guarantee account.

(d) The commissioner shall annually submit to the governor and the speakers of the senate and house of representatives, within ninety (90) days after the end of the fiscal year, a complete and detailed report setting forth the operations, transactions and accomplishments of the disadvantaged business loan guarantee fund.

History.
Acts 1990, ch. 1071, § 1.

4-26-107. Guidelines and reports to the government operations committees of the senate and house of representatives.

The office of business enterprise shall provide guidelines to address any impediments by other state agencies to the conduct of the office of business enterprise to the members of the government operations committees of the senate and the house of representatives. The office of business enterprise shall also provide periodic reports to the government operations committees of the

senate and house of representatives relative to the audit findings of the office of the comptroller.

History.
Acts 2006, ch. 935, § 3.

CHAPTER 27

EMPLOYEE SUGGESTION AWARD AND INCENTIVE PLANS

Section
4-27-101. Establishment.
4-27-102. Board — Establishment — Composition.
4-27-103. Duties of board.
4-27-104. Ineligible employees.
4-27-105. Cash awards — Maximum.

4-27-101. Establishment.

(a) There is established an employee suggestion award program for employees and retired employees of state government.

(b) Under this program, cash or honorary awards may be made to state employees and retired state employees whose adopted suggestions will result in substantial savings or improvement in state operations.

History.
Acts 1977, ch. 212, § 1; T.C.A., § 4-2701;
Acts 1980, ch. 643, § 1.

4-27-102. Board — Establishment — Composition.

There is hereby established an employee suggestion award board, which shall be composed of the commissioner of finance and administration, the commissioner of human resources, the commissioner of general services, the executive director of fiscal review committee, and one (1) member appointed by the Tennessee State Employees Association.

History.
Acts 1977, ch. 212, § 2; T.C.A., § 4-2702; Acts 1985, ch. 292, § 1; 2007, ch. 60, § 3.

Compiler's Notes.
The employee suggestion award board, created by this section, terminates June 30, 2023. See §§ 4-29-112, 4-29-244.

Acts 2007, ch. 60, § 3 provided that the references to the department of personnel are changed to the department of human resources, effective April 24, 2007.

4-27-103. Duties of board.

It is the duty of the board to:

(1) Adopt rules governing its proceedings;
(2) Elect a chair and secretary;
(3) Keep permanent and accurate records of its proceedings;
(4) Establish criteria for making awards;
(5) Adopt rules and regulations to carry out this chapter;

(6) Approve each award made; and

(7) Meet at least quarterly to evaluate suggestions made by employees.

History.
Acts 1977, ch. 212, § 3; T.C.A., § 4-2703;
Acts 2018, ch. 1038, § 2.

4-27-104. Ineligible employees.

In establishing criteria for making awards, the board may exclude certain levels of positions from participation in the program, but in no event shall the following levels of management be eligible to receive cash awards under the program:

(1) LEVEL I: Governor's staff, department commissioner or equivalent;

(2) LEVEL II: Assistant or deputy commissioner, assistant to commissioner, major fiscal and administrative policy departmental staff or equivalent;

(3) LEVEL III: Director or division chief, including the full line division chief to a statewide program; includes chief of division supervising several line service units or equivalent;

(4) LEVEL IV: Assistant to director or division chief, section chief or head of major departmental function or equivalent.

History.
Acts 1977, ch. 212, § 3; T.C.A., § 4-2704.

4-27-105. Cash awards — Maximum.

(a)(1) The cash award shall be:

(A) Equal to fifteen percent (15%) of the annual savings realized in a fiscal year, with a maximum award of one hundred thousand dollars ($100,000);

(B) Paid within ninety (90) days of the end of each fiscal year in which the savings have been realized; and

(C) Limited to the first fiscal year following the fiscal year in which the suggestion was made.

(2) If the cash award is over fifty thousand dollars ($50,000) the award must be spread over three (3) years following the fiscal year in which the suggestion was made in equal amounts; however, if the employee who is entitled to the award leaves state service the employee forfeits the remaining award appropriation item or items of the state agency to which actual savings apply.

(b)(1) The board shall promulgate rules to develop criteria for making awards pursuant to this section, including, but not limited to, the development and implementation of an electronic mail notification to transmit to all state government employees information on the employee suggestion award program. The electronic mail notification shall be made annually by the board and shall include, but not be limited to, the provisions of this section.

(2) In promulgating rules, the board shall consider the following factors:

(A) Severity of the present problem;

(B) Effectiveness of the suggestion offered;

(C) The need to encourage improvement in state operations; and
(D) Ingenuity of the suggestion.

History.
Acts 1977, ch. 212, § 4; T.C.A., § 4-2705; Acts 1981, ch. 363, § 1; 1985, ch. 292, § 2; 1987, ch. 325, § 3; 2004, ch. 421, §§ 1, 2; 2018, ch. 1038, § 1.

CHAPTER 28

TENNESSEE SMALL BUSINESS INVESTMENT COMPANY CREDIT ACT

Section
4-28-101. Short title.
4-28-102. Chapter definitions.
4-28-103. Participating investor's investment tax credit — Limits — Payment of retaliatory tax not required — Credits against other taxes.
4-28-104. Standardized format for qualification — Qualification requirements — Determination of satisfaction of requirements — Issuance of certification or refusal — Submission of applications.
4-28-105. Standardized format for TNInvestco to apply for investment tax credits — Information required in applications — Submission of irrevocable investment commitments — Penalty for failure to perform — Review of applications — Criteria — Aggregate amount of investment tax credits to be allocated — Deadline for approval.
4-28-106. Maintaining certification — Penalty for failure to meet performance measures — Request for written determination that proposed investment will qualify as a qualified investment in a qualified business or a seed or early stage investment.
4-28-107. Restrictions on insurance companies and their affiliates.
4-28-108. Distributions from qualified TNInvestco.
4-28-109. Payment of profit share percentage or end date profit share percentage — Transfers from the general fund to the Tennessee rural opportunity fund and the small and minority owned business assistance program fund — Distribution of investment returns — Minimizing any related federal tax obligation.
4-28-110. Report by TNInvestco — Annual, nonrefundable certification fee — Satisfaction of the requirements of § 4-28-106(a)(1) — Key persons.
4-28-111. Annual review — Summary of findings — Curing noncompliance.
4-28-112. Annual report.
4-28-113. Investment stategy scorecard — Annual review — Compliance — Written findings.
4-28-114. Maintenance of website.
4-28-115. Liquidation of remaining state ownership interests — Method — Approval by treasurer — Investments liquidated after program end date.

4-28-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Small Business Investment Company Credit Act."

History.
Acts 2009, ch. 610, § 2.

Compiler's Notes.
Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

4-28-102. Chapter definitions.

As used in this chapter:

(1) "Affiliate" means:

(A)(i) Any person who, directly or indirectly, beneficially owns, controls or holds the power to vote fifteen percent (15%) or more of the outstanding voting securities or other voting ownership interest of a TNInvestco or insurance company; or

(ii) Any person, fifteen percent (15%) or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled or held with power to vote by a TNInvestco or insurance company;

(B) Notwithstanding this subdivision (1), an investment by a participating investor in a TNInvestco pursuant to an allocation of investment tax credits under this section does not cause that TNInvestco to become an affiliate of that participating investor;

(2) "Allocation amount" means the total amount of tax credits allocated to the participating investors in a qualified TNInvestco pursuant to this chapter;

(3) "Allocation date" means the date on which investment tax credits under § 4-28-105 are allocated to the participating investor of a qualified TNInvestco under this chapter;

(4) "Base investment amount" means fourteen million dollars ($14,000,000) in the case of a qualified TNInvestco receiving one (1) allocation of tax credits and twenty eight million dollars ($28,000,000) in the case of a qualified TNInvestco receiving two (2) allocations of tax credits, which must be available in cash or cash equivalents immediately following the investment by a TNInvestco's participating investors and its owners; provided, however, that a contract for payment of cash or cash equivalents over a specified period of time shall also be sufficient;

(5) "Designated capital" means an amount of money that is invested by a participating investor in a qualified TNInvestco;

(6) "End date profit share percentage" means a fee paid to the state by a qualified TNInvestco as provided in § 4-28-109 in an amount equal to ninety-nine percent (99%) of all distributions or payments made by a qualified TNInvestco that are not classified as qualified distributions, other than distributions or repayments of capital contributions by the TNInvestco's equity owners who are not participating investors and that occur after the program end date;

(7) "Investment period" means the period January 1, 2010, through December 31, 2019;

(8) "Minority-owned business" means a business that is wholly owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by one (1) or more individuals who are members of any racial or ethnic minority within the state and whose management and daily business operations are under the control of one (1) or more members of any racial or ethnic minority within the state;

(9) "Participating investor" means any insurance company required to pay the gross premiums tax pursuant to § 56-4-205 that contributes

designated capital pursuant to this chapter;

(10) "Person" means any natural person or entity, including, but not limited to, a corporation, general or limited partnership, trust or limited liability company;

(11) "Profit share percentage" means a fee paid to the state by a qualified TNInvestco as provided in § 4-28-109 in an amount equal to fifty percent (50%) of all distributions or payments made by a qualified TNInvestco that are not classified as qualified distributions, other than distributions or repayments of capital contributions by the TNInvestco's equity owners who are not participating investors;

(12) "Program end date" means December 31, 2024;

(13)(A) "Qualified business" means a business that is independently owned and operated and meets all of the following requirements:

(i) It is headquartered in this state, its principal business operations are located in this state, and at least sixty percent (60%) of its employees are located in this state;

(ii) It has not more than one hundred (100) employees;

(iii) It is not principally engaged in:

(a) Professional services provided by accountants, doctors or lawyers;

(b) Banking or lending;

(c) Real estate development;

(d) Insurance;

(e) Oil and gas exploration; or

(f) Gambling activities; and

(iv) It is not a franchise of and has no financial relationship with a TNInvestco or any affiliate of a TNInvestco prior to a TNInvestco's first qualified investment in the business; provided, however, that if the TNInvestco continues to fulfill its fiduciary duty to the program established by this chapter, then the business can be one in which the TNInvestco, its affiliates, or a separate fund managed by the managers of the TNInvestco was invested prior to the allocation of investment tax credits to the TNInvestco; and provided, further, that if the TNInvestco continues to fulfill its fiduciary duty to the program established by this chapter, then the business can be one in which a separate fund managed by the managers of the TNInvestco makes an investment after the investment by the TNInvestco;

(B)(i) The requirements of subdivision (13)(A)(i) may, in the alternative, be met if the qualified TNInvestco represents in its application for funding approval that the business will, in the definitive purchase agreements to be executed upon closing, agree to:

(a) Commence locating its headquarters, its principal business operations, and at least sixty percent (60%) of its employees in Tennessee; and

(b) Complete all of the required elements of subdivision (13)(A)(i) within twelve (12) months after closing;

(ii) If the business fails to fulfill the commitments specified in subdivision (13)(B)(i), then the commissioner of economic and commu-

nity development may, in the commissioner's sole discretion, impose on the TNInvestco the following penalty. Notwithstanding subdivision (11) to the contrary, under the penalty authorized by this subdivision (13)(B)(ii), the profit share percentage, as otherwise defined in subdivision (11), shall be amended such that the fee paid to the state by the qualified TNInvestco in connection with the business shall equal eighty percent (80%), rather than fifty percent (50%), of any distributions arising from the TNInvestco's investment in the business, other than qualified distributions or distributions or repayments of capital contributions by the TNInvestco's equity owners who are not participating investors;

(C) A business classified as a qualified business at the time of the first qualified investment in the business will remain classified as a qualified business and may receive continuing qualified investments from any TNInvestco; provided, that the business continues to meet the requirements of subdivision (13)(A)(i);

(14) "Qualified distribution" means any distribution or payment by a qualified TNInvestco in connection with the following:

(A) Costs and expenses of forming, syndicating and organizing the qualified TNInvestco, including fees paid for professional services; provided, however, that start up costs shall not exceed one hundred twenty-five thousand dollars ($125,000);

(B) An annual management fee to offset the costs and expenses of managing and operating a qualified TNInvestco; provided, however, that in the first four (4) years following its allocation date, a qualified TNInvestco's management fee shall not exceed two percent (2%) of its base investment amount per annum and in the fifth through tenth years following its allocation date, a qualified TNInvestco's management fee per annum shall not exceed two percent (2%) of the lesser of its base investment amount or its qualified investments;

(C) Reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of a qualified TNInvestco not including any lobbying or governmental relations; provided, however, that professional service fees shall not exceed fifty thousand dollars ($50,000) annually;

(D) An increase or projected increase in federal or state taxes of the equity owners of a TNInvestco resulting from the earnings or other tax liability of a TNInvestco to the extent that the increase is related to the ownership, management or operation of a TNInvestco; provided, however, that such distributions shall not exceed that actual tax liability due and payable on such investor's actual return. Documents supporting such payments must be provided to the commissioner of revenue upon request; or

(E) Payments to the TNInvestco's equity owners who are not participating investors; provided, that no such payments shall reduce the base amount for other purposes of this chapter without regard to the early or seed stage multiplier;

(15) "Qualified investment" means the investment of cash by a qualified TNInvestco in a qualified business for the purchase of equity, equity options, warrants, or debt convertible to equity. An investment by a qualified TNInvestco in a debt instrument whose terms are substantially equivalent to terms typically found in debt financing provided by banks to profitable companies, such as security interests in tangible assets with readily discernable orderly liquidation value in excess of the loan amount and/or personal guarantees, shall not be deemed as a qualified investment. Qualified investments determined to be seed or early stage investments shall be increased by three hundred percent (300%) for purposes of determining if a qualified TNInvestco meets the investment thresholds in § 4-28-106;

(16) "Qualified TNInvestco" means a TNInvestco that has been approved to receive an investment tax credit allocation;

(17) "Seed or early stage investment" means an investment in a company that has a product or service in testing or pilot production that may or may not be commercially available. The company may or may not be generating revenues and may have been in business less than three (3) years at the time of investment;

(18) "State premium tax liability" means any liability incurred by an insurance company under § 56-4-205 or in the case of a repeal or a reduction by the state of the liability imposed by § 56-4-205, any other tax liability imposed upon an insurance company by the state;

(19) "TNInvestco" means a partnership, corporation, trust or limited liability company, whether organized on a for-profit or not-for-profit basis that completes the application process in § 4-28-104 and that is certified by the department of economic and community development as meeting the established criteria; and

(20) "Woman-owned business" means a business that is wholly owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

History.

Acts 2009, ch. 610, § 3; 2010, ch. 1142, §§ 1-5, 15, 24, 25; 2021, ch. 510, § 1.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-514 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

Amendments.

The 2021 amendment added the definitions for "end date profit share percentage" and "program end date".

Effective Dates.

Acts 2021, ch. 510, § 6. May 25, 2021.

4-28-103. Participating investor's investment tax credit — Limits — Payment of retaliatory tax not required — Credits against other taxes.

(a) A participating investor shall earn an investment tax credit against its state premium tax liability equal to one hundred percent (100%) of the investment tax credit allocated to the participating investor under § 4-28-105. The participating investor's investment tax credit shall be earned and vested upon making its investment in the qualified TNInvestco. Beginning January 1, 2012, a participating investor may claim the investment tax credit as follows:

(1) In tax years 2012, 2013, 2014, and 2015, an amount equal to fifteen percent (15%) of the investment tax credit allocated to the participating investor; and

(2) In tax years 2016, 2017, 2018 and 2019, an amount equal to ten percent (10%) of the investment tax credit allocated to the participating investor.

(b) No participating investor's investment tax credit for any taxable year shall exceed the participating investor's state premium tax liability for such year. If the amount of the investment tax credit determined under this section for any taxable year exceeds the state premium tax liability, then the excess shall be an investment tax credit carryover to future taxable years until tax year 2037. Investment tax credits may be used in connection with both final payments and prepayments of a participating investor's state premium tax liability. Investment tax credits may be sold or otherwise transferred by a participating investor to another entity, which can likewise resell or transfer the tax credits; provided, that the department of revenue receives written notification within thirty (30) days of any sale or transfer.

(c) A participating investor claiming an investment tax credit under this section is not required to pay any additional retaliatory tax levied as a result of claiming the investment tax credit.

(d) A participating investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the participating investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the participating investor's tax liability based on the investment tax credit allowed under this section.

(e) If the taxes paid by a participating investor with respect to its state premium tax liability constitute a credit against any other tax that is imposed by this state, the participating investor's credit against the other tax shall not be reduced by virtue of the reduction in the participating investor's tax liability based on the investment tax credit allowed under this section.

History.

Acts 2009, ch. 610, § 4; 2010, ch. 1142, § 6.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the

act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-104. Standardized format for qualification — Qualification requirements — Determination of satisfaction of requirements — Issuance of certification or refusal — Submission of applications.

(a) The department of economic and community development, in consultation with the department of revenue, shall provide a standardized format for persons attempting to qualify as a TNInvestco.

(b) An applicant for qualification is required to:

(1) File an application with the department of economic and community development;

(2) Pay a nonrefundable application fee of seven thousand five hundred dollars ($7,500) at the time of filing the application; and

(3) Submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than sixty (60) days before the application date that states that the applicant has an equity capitalization of five hundred thousand dollars ($500,000) or more in the form of unencumbered cash, marketable securities or other liquid assets.

(c) The department of economic and community development and the department of revenue must review the organizational documents of each applicant for certification and determine whether the applicant has satisfied the requirements of this chapter.

(d) Within thirty (30) days after the receipt of an application, the department of economic and community development shall issue the certification or refuse the certification and communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of such grounds.

(e) The department of economic and community development must begin accepting applications to become a TNInvestco by August 1, 2009. All applications must be submitted to the department of economic and community development no later than the close of business on October 1, 2009.

(f)(1) Any information received, created, or promulgated by the department of economic and community development or the department of revenue pursuant to this section on or after July 9, 2009, shall constitute a public record, as defined in § 10-7-503, and shall be open for personal inspection by any citizen of this state.

(2) Any information received, created, or promulgated by the department of economic and community development or the department of revenue pursuant to this section shall not:

(A) Constitute "tax information" or "tax administration information", as defined in § 67-1-1701, and shall not be subject to title 67, chapter 1, part 17; or

(B) Be subject to § 4-3-730.

(g) If the general assembly subsequently authorizes an allocation of investment tax credits in addition to the two hundred million dollars ($200,000,000)

authorized by § 4-28-105(f) and by Chapter 610 of the Public Acts of 2009, the department of revenue and the department of economic and community development, in reviewing the organizational documents of each applicant for certification and determining whether the applicant has satisfied the requirements of this chapter pursuant to subsection (c), shall additionally take into consideration the applicant's involvement of women and minorities.

History.

Acts 2009, ch. 610, § 5; 2010, ch. 1142, §§ 7, 31.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-105. Standardized format for TNInvestco to apply for investment tax credits — Information required in applications — Submission of irrevocable investment commitments — Penalty for failure to perform — Review of applications — Criteria — Aggregate amount of investment tax credits to be allocated — Deadline for approval.

(a) The department of economic and community development, in consultation with the department of revenue must provide a standardized format for a TNInvestco to apply for the investment tax credits.

(b) Applications shall contain such information as required by the department of revenue and the department of economic and community development, including statements regarding the ability to obtain the required investment commitments. Each TNInvestco shall submit irrevocable investment commitments from participating investors and TNInvestco owners in an aggregate amount equal to at least the base investment amount not later than November 30, 2009. TNInvestcos that are awarded investment tax credits under this chapter based on the asserted ability to raise the required capital shall be subject to a fifty-thousand-dollar ($50,000) penalty for failure to perform. The proceeds from any such penalty shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts.

(c)(1)(A) The department of revenue and the department of economic and community development, in consultation with the Tennessee Technology Development Corporation, shall review the applications and award the investment tax credits based on the overall strength of the application using the following criteria:

(i) The applicant has at least two (2) investment managers with five (5) or more years of investment experience;

(ii) The applicant has been based, as defined by having a principal office, in this state for at least five (5) years or has at least five (5) years of experience in investing primarily in Tennessee domiciled companies;

(iii) The applicant's proposed investment strategy for achieving

transformational economic development outcomes through focused investments of capital in seed or early stage companies with high-growth potential; and

(iv) The applicant's demonstrated ability to lead investment rounds, advise and mentor entrepreneurs and facilitate follow-on investments.

(B) TNInvestcos that do not meet the criteria in subdivision (c)(1)(A)(ii) may submit a joint application with an entity that meets the criteria set out in subdivision (c)(1)(A)(ii), and such application shall be judged based on the combined attributes of the joint application.

(2) The awarding of investment tax credits shall be in the sole discretion of the commissioner of revenue and the commissioner of economic and community development.

(d) The aggregate amount of investment tax credits to be allocated to all participating investors of qualified TNInvestcos under this chapter shall not exceed one hundred twenty million dollars ($120,000,000). The investment tax credits will be awarded in twenty-million-dollar ($20,000,000) allocations. No TNInvestco, on an aggregate basis with its joint applicants, may apply for more than two (2) twenty-million-dollar ($20,000,000) allocations.

(e) The TNInvestco will receive, no later than December 31, 2009, a written notice from the department of economic and community development stating whether or not it has been approved as a qualified TNInvestco and, if applicable, stating the amount of its investment tax credit allocation.

(f) Notwithstanding subsection (d), the commissioner of revenue and the commissioner of economic and community development are authorized to allocate additional investment tax credits in the total amount of eighty million dollars ($80,000,000) such that the aggregate amount of investment tax credits to be allocated under this chapter shall not exceed two hundred million dollars ($200,000,000). Such additional investment tax credits shall consist of four (4) twenty-million-dollar allocations, which shall be awarded, respectively, to the four (4) TNInvestcos, chosen as finalists by the commissioner of revenue and the commissioner of economic and community development during the selection process set out in subsections (a)-(e), that did not receive an allocation of investment tax credits under subsection (d). Final allocation of such tax credits to such TNInvestcos shall occur after the TNInvestcos have obtained irrevocable investment commitments from participating investors and TNInvestco owners in an aggregate amount equal to at least the base investment amount. The tax credits awarded pursuant to this section shall be syndicated in a manner approved by the state treasurer and the commissioner of economic and community development. Any contract to sell tax credits, entered on or after June 30, 2010, in a manner that has not been approved by the state treasurer and the commissioner of economic and community development shall be voidable in the sole discretion of the state treasurer.

(g) If the general assembly subsequently authorizes an allocation of investment tax credits in addition to the two hundred million dollars ($200,000,000) authorized by subsection (f) and by chapter 610 of the Public Acts of 2009, in reviewing applications and awarding such credits, the commissioner of revenue and the commissioner of economic and community development shall strive to select applicants whose investment team membership is reflective of the racial, ethnic and gender diversity of Tennessee's population.

History.

Acts 2009, ch. 610, § 6; 2010, ch. 1142, §§ 8, 9, 32.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and § 4-3-714 —4-3-730. For provisions concerning the office of energy management of the department of general services, see §§ 4-3-1107 — 4-3-1111.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-106. Maintaining certification — Penalty for failure to meet performance measures — Request for written determination that proposed investment will qualify as a qualified investment in a qualified business or a seed or early stage investment.

(a)(1)(A) To maintain its certification, a qualified TNInvestco shall make qualified investments, as follows:

(i) Within two (2) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least fifty percent (50%) of its base investment amount in qualified investments;

(ii) Within three (3) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least seventy percent (70%) of its base investment amount in qualified investments;

(iii) Within four (4) years after the allocation date, a qualified TNInvestco shall have invested an amount equal to at least eighty percent (80%) of its base investment amount in qualified investments; and

(iv) Within six (6) years or any year thereafter the allocation date, a qualified TNInvestco shall have invested an amount equal to at least ninety percent (90%) of its base investment amount in qualified investments.

(B) Not more than twenty-five percent (25%) of the investment amounts required by subdivisions (a)(1)(A)(i)-(iv) shall be attributable to the three-hundred-percent (300%) seed or early-stage multiplier.

(2) Failure to meet the performance measures set out in subdivision (a)(1) during any calendar year shall result in a two-hundred-fifty-thousand-dollar penalty fee against the qualified TNInvestco. The proceeds from any such penalty fee shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty fee imposed under this subdivision (a)(2).

(b) Prior to making a proposed qualified investment in a specific business, a qualified TNInvestco must request from the department of economic and community development a written determination that the proposed investment will qualify as a qualified investment in a qualified business or, if applicable, a seed or early stage investment. The department shall notify a qualified TNInvestco within ten (10) business days from the receipt of a request of its determination. If the department fails to notify the qualified

TNInvestco of its determination within ten (10) business days, the proposed investment will be deemed to be a qualified investment in a qualified business and, if applicable, a seed or early stage investment. If the department determines that the proposed investment does not meet the definition of a qualified investment, qualified business, or seed or early stage investment, the department may nevertheless consider the proposed investment a qualified investment, or a seed or early stage investment, and if necessary, the business a qualified business, if the department determines that the proposed investment will further state economic development.

(c) All designated capital not invested in qualified investments by a qualified TNInvestco shall be held in an escrow account maintained by the state and administered through the department of economic and community development.

(d) A qualified TNInvestco may not invest more than fifteen percent (15%) of its designated capital in any one qualified business without the specific approval of the department of economic and community development.

(e) Any amounts that have not been invested by the TNInvestco at the end of the investment period shall be forfeited and paid to the state to support the Tennessee rural opportunity fund. Investment returns, profits and the portion of the base investment amount, may be reinvested until the seventh anniversary of the fund. If a TNInvestco elects to reinvest returns, the TNInvestco shall reinvest the state's and the TNInvestco's returns in equal portions.

(f) No qualified TNInvestco shall sell any interest in a qualified business to an affiliate unless the TNInvestco has first obtained written authorization for the sale from the department of economic and community development.

(g)(1) All qualified TNInvestcos, and the qualified businesses in which they invest, shall strive to maximize the participation of minority-owned businesses and woman-owned businesses to reflect the racial, ethnic and gender diversity of Tennessee's population.

(2) The department of economic and community development shall promote awareness of the program established by this chapter among minority-owned businesses and woman-owned businesses.

(3) The department of economic and community development shall undertake training programs and other educational activities to increase diversity of participation by encouraging minority-owned businesses and woman-owned businesses to apply, compete and qualify for investments under this chapter.

(4) Each TNInvestco shall coordinate its efforts to strive to maximize participation in minority-owned businesses and woman-owned businesses with the efforts of the department of economic and community development.

(5) Each TNInvestco shall provide information on its website concerning this program and the availability of capital to businesses including minority-owned businesses and woman-owned businesses.

History.

Acts 2009, ch. 610, § 7; 2010, ch. 1142, §§ 10-12, 26; 2014, ch. 611, § 9.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had

previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-107. Restrictions on insurance companies and their affiliates.

An insurance company or affiliate of an insurance company shall not, directly or indirectly:

(1) Beneficially own, whether through rights, options, convertible interest or otherwise, fifteen percent (15%) or more of the voting securities or other voting ownership interest of a TNInvestco;

(2) Manage a TNInvestco, other than exercising remedies for default; or

(3) Control the direction of investments for a TNInvestco.

History.

Acts 2009, ch. 610, § 8.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

4-28-108. Distributions from qualified TNInvestco.

(a) Qualified distributions from a qualified TNInvestco may be made at any time.

(b) Distributions other than qualified distributions from a qualified TNInvestco may be paid out annually or upon designated liquidity events as established by the qualified TNInvestco. Any such distributions other than qualified distributions may not reduce the base investment amount during any calendar year.

(c) The profit share percentage or the end date profit share percentage shall be paid to the state in the same time and manner as all other distributions as provided in § 4-28-109. Any such payments shall be deposited into the general fund or the rural opportunity fund and the small and minority-owned business assistance program fund as provided in § 4-28-109.

(d) Investment capital liquidated during a liquidity event will be given a one-year redeployment period for purposes of calculating the investment thresholds in § 4-28-106.

(e) The department of economic and community development shall ensure, pursuant to the authority provided in this chapter, that a qualified TNInvestco provides adequate documentary support for all proceeds and distributions related to liquidity events and the department shall use best efforts to confirm that all information provided to the department by the TNInvestco is accurate so the department may ensure that all parties involved receive the proper designated share. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

History.

Acts 2009, ch. 610, § 9; 2010, ch. 1142, § 27; 2014, ch. 611, § 1; 2021, ch. 510, § 2.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

Amendments.

The 2021 amendment inserted "or the end date profit share percentage" near the beginning of (c).

Effective Dates.

Acts 2021, ch. 510, § 6. May 25, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-28-109. Payment of profit share percentage or end date profit share percentage — Transfers from the general fund to the Tennessee rural opportunity fund and the small and minority owned business assistance program fund — Distribution of investment returns — Minimizing any related federal tax obligation.

(a)(1)(A) Prior to or on the program end date, at any time that the TNInvestco makes distributions, other than qualified distributions or distributions representing repayments of capital contributions, to its equity investors, the qualified TNInvestco shall pay to the state the profit share percentage. After the program end date, at any time that the TNInvestco makes distributions, other than qualified distributions or distributions representing repayments of capital contributions, to its equity investors, the qualified TNInvestco shall pay to the state the end date profit share percentage. Any such payments shall be deposited into the general fund until such time as the department of finance and administration certifies that the total amount of payments deposited in the general fund equals the total amount of revenue forgone pursuant to the credits used as provided in § 4-28-103. Any payments made in excess of the amount of revenue forgone shall be deposited into the Tennessee rural opportunity fund and the small and minority-owned business assistance program fund to further support the state's economic development efforts.

(B) The department shall obtain all necessary information from each TNInvestco to support the state's profit share percentage or the end date profit share percentage. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

(2) After the department of finance and administration has provided its certification pursuant to subdivision (a)(1), any additional state revenue generated and deposited into the general fund as a result of this chapter through sales and use taxes, franchise and excise taxes, business taxes or any other source of revenue shall be identified by the department of revenue. The amount of this additional revenue shall be certified by the department

of revenue on an annual basis and an amount equivalent to the certified amount shall be transferred from the general fund and seventy-five percent (75%) of such amount shall be transferred to the Tennessee rural opportunity fund and twenty-five percent (25%) of such amount shall be transferred to the small and minority-owned business assistance program fund.

(b) Following the seventh anniversary of the fund, investment returns (profits and the portion of the base investment amount) may be distributed as liquidity permits; provided, that no more than twenty-five percent (25%) of the TNInvestco's base amount may be distributed in any one (1) year until the end of the investment period, at which time all of the fund's proceeds may be distributed as liquidity permits.

(c) The TNInvestco and the state shall structure the qualified distributions and final payments in a manner that minimizes any related federal tax obligation. To the extent that the profit share distribution to qualified TNInvestco investors is less than the state's share, pursuant to the profit share percentage, due to federal income tax liabilities, the final payments may be adjusted to equalize the post-tax profit share payments made during the investment period.

History.

Acts 2009, ch. 610, § 10; 2010, ch. 1142, §§ 28, 29; 2014, ch. 611, § 2; 2021, ch. 510, §§ 3, 4.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

Amendments.

The 2021 amendment in (a)(1)(A), added "Prior to or on the program end date," to the beginning of the first sentence and added the second sentence; and substituted "to support the state's profit share percentage or the end date profit share percentage" for "to support the state's profit share percentage" in (a)(1)(B).

Effective Dates.

Acts 2021, ch. 510, § 6. May 25, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-28-110. Report by TNInvestco — Annual, nonrefundable certification fee — Satisfaction of the requirements of § 4-28-106(a)(1) — Key persons.

(a) Each qualified TNInvestco shall report the following to the department of economic and community development:

(1) As soon as practicable, but no later than thirty (30) days after the receipt of designated capital:

(A) The name of each participating investor from which the designated capital was received, including such participating investor's insurance tax identification number;

(B) The amount of each participating investor's investment of designated capital; and

(C) The date on which the designated capital was received;

(2) On an annual basis, on or before January 31 of each year:

(A) The amount of the qualified TNInvestco's remaining uninvested designated capital at the end of the immediately preceding taxable year;

(B) Whether or not the qualified TNInvestco has invested more than fifteen percent (15%) of its total designated capital in any one (1) business;

(C) All qualified investments that the qualified TNInvestco has made in the previous taxable year and the number of employees, including the number of minority and women employees, of each such qualified business at the time of such investment and as of December 31 of the preceding taxable year; and

(D) For any qualified business where the qualified TNInvestco no longer has an investment, the qualified TNInvestco must provide employment figures for that company as of the last day before the investment was terminated;

(3) Other information that the department may reasonably request that will help the department ascertain the impact of the TNInvestco program both directly and indirectly on the economy of this state; and

(4) Within one hundred twenty (120) days of the close of its fiscal year, annual audited financial statements of the qualified TNInvestco, which must include the opinion of an independent certified public accountant, and an examination review of follow-on capital, jobs data and pacing requirement compliance also performed by the independent certified public accountant, prepared in accordance with audit and attestation standards established by the American Institute of Certified Public Accountants. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information.

(b) A qualified TNInvestco must pay to the department of economic and community development an annual, nonrefundable certification fee of five thousand dollars ($5,000) on or before April 1, or ten thousand dollars ($10,000) if later. No annual certification fee is required if the payment date for such fee is within six (6) months of the date a qualified TNInvestco is first certified by the department.

(c) Upon satisfying each of the requirements of § 4-28-106(a)(1), a qualified TNInvestco shall provide notice to the department of economic and community development and the department shall, within sixty (60) days of receipt of such notice, either confirm that the qualified TNInvestco has satisfied such requirement of § 4-28-106(a)(1) as of such date or provide notice of noncompliance and an explanation of any existing deficiencies. If the department does not provide such notification within sixty (60) days, the qualified TNInvestco shall be deemed to have met such requirement of § 4-28-106(a)(1).

(d)(1) For the purposes of this subsection (d), "key person" means:

(A) The TNInvestco investment managers listed in part II, item 6, of such TNInvestco's application under § 4-28-105; or

(B) A list of investment managers as has been previously approved by the department of economic and community development under subdivision (d)(2) or otherwise.

(2) A TNInvestco's success shall be deemed to depend, in particular, on the TNInvestco's key person or persons. On or before July 1, 2010, each qualified

TNInvestco shall provide to the department of economic and community development a description of the TNInvestco's procedure for choosing a successor should any key person die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days. In the event that a majority of key persons do die, become legally incapacitated, or cease to be involved in the management of the TNInvestco for more than ninety (90) consecutive days for any reason, the commissioner of economic and community development, in consultation with the commissioner of revenue, the Tennessee Technology Development Corporation, or any other appropriate professional advisors, shall determine whether a new individual or individuals will be able to assume the role of key person so that the TNInvestco's performance will remain unimpaired. If the commissioner of economic and community development determines, in the commissioner's sole discretion, that the key person cannot be adequately replaced and the TNInvestco's performance therefore will be impaired, then any funds not already invested by the TNInvestco shall be deposited into the general fund unless the department of finance and administration has certified, pursuant to § 4-28-109, that the total amount of payments deposited in the general fund under this chapter equals or exceeds the total amount of revenue forgone pursuant to the credits used as provided in § 4-28-103. If the department of finance and administration has made such a determination, then any funds not already invested by the TNInvestco shall be deposited into the Tennessee rural opportunity fund to further support the state's economic development efforts.

(e) To promote openness and transparency, a copy of each annual report received by the department of economic and community development pursuant to this section shall be posted on the Tennessee TNInvestco website that is maintained by the department of economic and community development.

History.

Acts 2009, ch. 610, § 11; 2010, ch. 1142, §§ 13, 16, 30; 2014, ch. 611, §§ 3, 4.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-28-111. Annual review — Summary of findings — Curing noncompliance.

(a) The department shall conduct an annual review of each qualified TNInvestco to determine if the qualified TNInvestco is abiding by the requirements of the program and to ensure that no investments have been made in violation of this chapter. This review shall include the use of the scorecard data received from each qualified TNInvestco as provided in § 4-28-113. The department shall also compare this scorecard data to the qualified TNInvest-

co's original application to examine the investment strategy for accuracy and consistency and to ensure that statutory requirements and the department's policies are met each year. Information provided to the department pursuant to this section shall be kept confidential due to the proprietary nature of such information. The cost of the annual review shall be paid by each qualified TNInvestco according to a reasonable fee schedule adopted by the department.

(b) The department shall provide the qualified TNInvestco a summary of findings including any areas of noncompliance. Failure to cure the areas of noncompliance within forty-five (45) days from the date of the notice of noncompliance shall result in a penalty of ten thousand dollars ($10,000) per day until the noncompliance is cured. The proceeds from a penalty assessed pursuant to this subsection (b) shall be deposited into the Tennessee rural opportunity fund, to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed under this section.

(c) The department of economic and community development shall provide the comptroller of the treasury and the state treasurer, upon request, a copy of any written findings made in connection with the annual review required under subsection (a) and a copy of the summary of findings provided to the qualified TNInvestco pursuant to subsection (b).

(d) The department of economic and community development may promulgate rules to ensure compliance with the requirements listed in this chapter and the policies and procedures set forth by the department. Rules promulgated by the department may assess a penalty of up to ten thousand dollars ($10,000) per incidence for failure to comply with the requirements. The proceeds from any such penalty shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts. Funds related to the investment tax credit shall not be used to pay the penalty imposed by the rules. Any penalty assessed may be netted against the annual management fee.

History.

Acts 2009, ch. 610, § 12; 2010, ch. 1142, § 17; 2014, ch. 611, §§ 5-7.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-28-112. Annual report.

(a) The department of economic and community development shall make an annual report to the governor, the comptroller of the treasury, the state treasurer, and the chairs and ranking minority members of the committees having jurisdiction over taxes and economic development. The report must include:

(1) The number of qualified TNInvestcos holding designated capital;

(2) The amount of designated capital invested in each qualified TNInvestco;

(3) The cumulative amount that each qualified TNInvestco has invested as of January 1, 2011, and the cumulative total each year thereafter;

(4) The cumulative amount of follow-on capital that the investments of each qualified TNInvestco have created in terms of capital invested in qualified businesses at the same time or subsequent to investments made by a qualified TNInvestco in such businesses by sources other than qualified TNInvestcos;

(5) The total amount of investment tax credits applied under this chapter for each year;

(6) The performance of each qualified TNInvestco with regard to the requirements for continued certification;

(7) The classification of the companies in which each qualified TNInvestco has invested according to industrial sector and size of company;

(8) The gross number of jobs created by investments made by each qualified TNInvestco and the number of jobs retained;

(9) The location of the companies in which each qualified TNInvestco has invested;

(10) Those qualified TNInvestcos that have been decertified, including the reasons for decertification; and

(11) Other related information as necessary to evaluate the effect of this chapter on economic development.

(b) To promote openness and transparency, a copy of each annual report made by the department of economic and community development pursuant to this section shall be posted on the Tennessee TNInvestco website that is maintained by the department of economic and community development.

(c) The department of economic and community development shall submit the annual report to the designees as specified in subsection (a) no later than the first Tuesday in September of the year following the year of the annual review of the TNInvestcos. If the report cannot be submitted by the first Tuesday in September deadline, the commissioner must notify the designees as specified in subsection (a) no later than thirty (30) days prior to the due date that the report will be late, the reasons why the report cannot be submitted in a timely manner, and an estimated submittal date.

History.

Acts 2009, ch. 610, § 13; 2010, ch. 1142, §§ 18, 19; 2014, ch. 611, § 8.

Compiler's Notes.

Former chapter 28, §§ 4-28-101 — 4-28-127 (Acts 1977, ch. 303, §§ 1-16, 20-24, 27, 28; T.C.A., §§ 4-2801 — 4-2825; Acts 1979, ch. 327, § 1; 1981, ch. 142, §§ 1-6, 8-18; 1982, ch. 939, §§ 1, 2), concerning energy development, management and conservation, was repealed by Acts 1983, ch. 429, § 1. Section 4-28-107 had previously been repealed by Acts 1981, ch. 142, § 7. For provisions concerning the office of energy programs of the department of economic and community development, see §§ 4-3-510 — 4-3-515 and §§ 4-3-714 — 4-3-730. For provisions concerning the office of energy management of the department of finance and administration, see title 4, chapter 3, part 10.

Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-113. Investment stategy scorecard — Annual review — Compliance — Written findings.

(a) Within ninety (90) days after the department of economic and community development provides notice to a TNInvestco, the commissioner of economic and community development and the commissioner of revenue, in consultation with the state treasurer, working with the TNInvestco, shall cause to be created an investment strategy "scorecard" for the TNInvestco. The "scorecard" shall contain not more than six (6) objective metrics or measures that will be used to reflect the investment strategy approved by the state, which strategy may, in the sole discretion of the commissioner of economic and community development, be modified from time to time upon written request of the TNInvestco to the commissioner of economic and community development.

(b) The commissioner of economic and community development, in consultation with the commissioner of revenue and the state treasurer or any other appropriate professional advisors, shall conduct an annual review of each qualified TNInvestco, at the conclusion of each fiscal year, to determine whether the investment strategy used by the TNInvestco is in substantial compliance with the TNInvestco's scorecard.

(c)(1) If the commissioner of economic and community development reasonably determines that the investment strategy actually used by the TNInvestco is not in substantial compliance with the scorecard, then the commissioner of economic and community development shall provide the qualified TNInvestco a summary of findings including the areas of noncompliance. Within sixty (60) days of receiving the commissioner's findings, the TNInvestco shall provide to the commissioner of economic and community development a written statement that shall describe in detail the TNInvestco's plan for curing all areas of noncompliance before the next annual review. Said plan may include a request for modification of the strategy with corresponding changes in the scorecard which, if approved, shall become the scorecard against which future compliance will be measured.

(2) If the commissioner of economic and community development reasonably determines, at the next annual review conducted pursuant to this section, that the TNInvestco has failed to cure such areas of noncompliance, a penalty in the amount of two hundred fifty thousand dollars ($250,000) shall be imposed, and an additional penalty of two hundred fifty thousand dollars ($250,000) shall be imposed for each year in which such noncompliance remains uncured.

(3) The proceeds from any penalty imposed pursuant to subdivision (c)(2) shall be deposited into the Tennessee rural opportunity fund to further the state's economic development efforts. Such penalty shall not be paid out of monies generated by the sale of investment tax credits under this chapter or any gain thereon.

(d) The department of economic and community development shall provide the comptroller of the treasury, upon request, a copy of any written findings made in connection with the annual review required under subsection (b).

History.
Acts 2010, ch. 1142, §§ 14, 20, 22, 23.

Compiler's Notes.
Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

4-28-114. Maintenance of website.

(a) Any qualified TNInvestco that has received an allocation of investment tax credits pursuant to this chapter shall be required to maintain a website that provides information to the general public about the biographical and professional background of each member of the executive management team of the TNInvestco and of each member of the board or other governing body of the TNInvestco. The qualified TNInvestco shall also provide information to the general public on its website concerning the availability of capital pursuant to the program established by this chapter.

(b) The department of economic and community development shall maintain at least one (1) web page that provides information to the general public about the TNInvestco program, including internet links to the websites of each qualified TNInvestco. Each qualified TNInvestco shall maintain an internet link on its website to the TNInvestco program web page of the department of economic and community development.

History.
Acts 2010, ch. 1142, § 21.

Compiler's Notes.
Acts 2010, ch. 1142, § 33 provided that the act shall apply to any entity certified as a TNInvestco, and to tax credits awarded, on or after July 9, 2009.

The TNInvestco web page can be found at: http://www.tn.gov/ecd/tninvestco/.

4-28-115. Liquidation of remaining state ownership interests — Method — Approval by treasurer — Investments liquidated after program end date.

Beginning on December 31, 2021, the department shall liquidate any remaining ownership interests owned by the state. Methods to liquidate remaining ownership interests include the sale of interests to a third party. The sale of any ownership interests shall be approved by the treasurer. Qualified investments that are liquidated after the program end date must be distributed between the qualified TNInvestco and the state according to the end date profit share percentage.

History.
Acts 2014, ch. 611, § 10; 2021, ch. 510, § 5

Amendments.
The 2021 amendment added the last sentence.

Effective Dates.
Acts 2021, ch. 510, § 6. May 25, 2021.

CHAPTER 29

TENNESSEE GOVERNMENTAL ENTITY REVIEW LAW

Part 1. Entity Review

Section
4-29-101. Short title.
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4-29-118. Termination date of governmental entities — Review of legislation creating governmental entities.
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4-29-120. Notification of interested persons — Notification registry — Rules and regulations.
4-29-121. Regulatory agencies not collecting fees sufficient to pay operating costs.
4-29-122. Notice to evaluation committee of transferred functions.
4-29-123. Infringement of an entity member's freedom of speech prohibited.
4-29-124. Promulgation of exemption of members from requirements of rules, policies, guidelines, or statements prohibited.

Part 2. Termination of Entities

4-29-201 — 4-29-239. [Reserved.]
4-29-240. Governmental entities terminated on June 30, 2019.
4-29-241. Governmental entities terminated on June 30, 2020.
4-29-242. Governmental entities terminated on June 30, 2021.
4-29-243. Governmental entities terminated on June 30, 2022.
4-29-244. Governmental entities terminated on June 30, 2023.
4-29-245. Governmental entities terminated on June 30, 2024.
4-29-246. Governmental entities terminated on June 30, 2025.
4-29-247. Governmental entities terminated on June 30, 2026.
4-29-248. Governmental entities terminated on June 30, 2027.
4-29-249. Governmental entities terminated on June 30, 2028.
4-29-250. Governmental entities terminated on June 30, 2029.

PART 1

ENTITY REVIEW

4-29-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Governmental Entity Review Law."

History.
Acts 1977, ch. 452, § 1; T.C.A., § 4-2901.

Law Reviews.
Remedies other than the Tennessee Uniform

Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Attorney General Opinions.

Enactment and application of 1991 Public Chapter 285, OAG 92-58, 1992 Tenn. AG LEXIS 56 (10/8/92).

NOTES TO DECISIONS

1. Status of Entities.

A county rail authority is not a governmental entity entitled to sovereign immunity, even though it is subject to the Governmental Entity Review Law. National Advertising v. McCormick Ashland City, 936 S.W.2d 256, 1996 Tenn. App. LEXIS 305 (Tenn. Ct. App. 1996).

4-29-102. Legislative findings — Purpose.

(a) The general assembly finds and declares that state regulation of its citizens, businesses and industries is increasing at an alarming rate and that a method of reviewing such regulation is necessary to ensure that unnecessary and harmful regulation is abolished and that legitimate, necessary regulation is conducted efficiently and economically.

(b) It is the intent of the general assembly by this chapter to provide a responsible method to review state governmental entities to ensure that state governmental regulation is beneficial rather than detrimental to the public interest of the citizens of Tennessee.

(c)(1) The general assembly declares that the delivery of human and community services to the state's citizens, including, but not limited to, the poor and aged, is a matter of public interest. The general assembly declares that the provision of human and community services should include, but not be limited to, the following goals: reduce and eliminate poverty; help every Tennessean become self-sufficient to improve their quality of life and standard of living; and coordinate, use, and distribute the state's financial, human, program, and other resources in the most effective and efficient manner possible.

(2)(A) The general assembly realizes that in many areas of the state, there are duplicate human and community service and action organizations that receive state appropriations, state-administered funds, or contracts with various state departments that could result in an unnecessary duplication of services and administration, thereby resulting in an unnecessary duplication of costs. Such unnecessary duplication could decrease the overall effectiveness of human and community service programs and agencies. The general assembly further realizes that if such unnecessary duplication exists, it is not efficient, effective, or in the public's best interest.

(B) Where there are two (2) or more agencies that receive state appropriations, state-administered funds, or contracts with various state departments in the same county or service area upon sunset review the reviewing authority shall make an evaluation of a duplication of services, administration or costs, and report this finding and make recommendations to the general assembly to correct this situation upon reauthorization of such agency or agencies, or reauthorization of state funding. Upon receiving such recommendation, the review committee created in § 4-29-103 may recommend to terminate state funds to the entities.

(3) The general assembly concludes that the evaluation of human and community service delivery agencies, their services, and programs is necessary to determine whether they are achieving their goals, using resources as effectively and efficiently as possible, and minimizing any duplication of services, administration, and costs. The general assembly further concludes that there is no systematic ongoing effort, using objective outcome measures, to evaluate human and community service and action organizations. The general assembly further concludes that a statewide strategy for such delivery would enable, promote, and require the effective and efficient coordination of programs, services, and resources among the state's human and community service delivery organizations.

(4) The general assembly finds that the state's human and community service and action organizations, including, but not limited to, community action agencies and human resource agencies, were authorized by state law and receive state appropriations, state-administered funds, or contracts with various state departments to provide services to Tennessee residents. Therefore, these agencies should be independently evaluated, using objective outcome measures. Such outcome measures will be defined by the reviewing entity and will include, but not be limited to:

(A) The extent to which the low-income clients served by the entities have become more self-sufficient;

(B) The extent to which the low-income clients have improved their lives through increased employment;

(C) The extent to which agency clients have been able to move to standard, permanent housing from substandard, temporary housing;

(D) The extent to which clients participate in community groups; and

(E) The extent to which administrative resources are used efficiently in relation to programmatic resources.

History.
Acts 1977, ch. 452, § 2; T.C.A., § 4-2902; Acts 1997, ch. 308, § 1.

Attorney General Opinions.
Constitutionality of termination of community action agencies, OAG 98-0129, 1998 Tenn. AG LEXIS 131(7/27/98).

Community action agencies' status as private or governmental entities, OAG 98-0129, 1998 Tenn. AG LEXIS 131 (7/27/98).

4-29-103. Review committees — Joint evaluation committee.

(a) The speakers of the senate and the house of representatives shall designate appropriate committees in their respective houses to conduct the review of governmental entities as provided in this chapter.

(b) The chairs of such committees shall appoint a subcommittee to conduct the review of each governmental entity.

(c) The appropriate subcommittees appointed in the senate and in the house of representatives shall meet as a joint committee as the evaluation committee to review each governmental entity assigned to such committee. There shall be an equal number of senators and representatives on the two (2) subcommittees and committees when meeting as a joint evaluation committee for the review of any specific governmental entity.

(d) Members of the evaluation committee shall serve until their successors are appointed in accordance with this section so long as such members remain

members of the general assembly. Any member of the evaluation committee who ceases to be a member of the general assembly shall cease to be a member of the evaluation committee on the same date such member's membership in the general assembly ceases, as provided in the Constitution of Tennessee. In the event a majority of the membership of any subcommittee comprising an evaluation committee shall cease to be members of the general assembly, the speaker of the house in which such vacancies occur shall designate members of that house to interim appointments until such time as the evaluation committee is reconstituted as provided in this section.

History.
Acts 1977, ch. 452, § 9; T.C.A., § 4-2909.

Law Reviews.
Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Attorney General Opinions.
Meetings of joint evaluation committee, OAG 06-041, 2006 Tenn. AG LEXIS 41 (2/27/06).

4-29-104. Hearings.

(a) Prior to the termination, continuation, reestablishment or restructuring of any governmental entity, the evaluation committee created in § 4-29-103 shall hold at least one (1) public hearing and receive testimony from the public and from the administrative head of the governmental entity.

(b) The governmental entity shall have the burden of demonstrating the public need for its continued existence and the extent to which any change in organization, structure or transfer to another department of state government for administrative purposes would increase the operational or administrative effectiveness and efficiency of such entity.

(c) Notice of the time and place of the public hearing must be posted on the general assembly website at least seven (7) days prior to the hearing.

History.
Acts 1977, ch. 452, § 10; T.C.A., § 4-2910; Acts 1980, ch. 722, §§ 1, 2; 1993, ch. 521, § 1; 2003, ch. 396, § 3; 2004, ch. 949, § 2; 2005, ch. 374, § 1; 2006, ch. 1000, § 1; 2007, ch. 547, § 1; 2016, ch. 574, § 1; 2021, ch. 404, § 1.

Code Commission Notes. Former subsections (d)-(h), concerning extending governmental entities that were due to terminate on June 30, 2003, June 30, 2004, June 30, 2005, June 30, 2006, and June 30, 2007, were deleted as obsolete by the code commission in 2011.

Amendments.
The 2021 amendment rewrote (c) which read: "(c)(1) Notice of the time and place of the public hearing shall be published in at least one (1) newspaper of general circulation in each of the state's major metropolitan areas, Nashville, Memphis, Knoxville, Chattanooga, and the tri-cities area composed of Bristol, Johnson City and Kingsport, ten (10) days prior to the hearing.

"(2) [Deleted by 2016 amendment.]

"(3) Funding allocated for purchasing publication of such notices in Nashville, Memphis, rural west Tennessee, Knoxville and Chattanooga newspapers may be expended to purchase publication of such notices within newspapers published primarily for distribution within the African-American communities within Nashville, Memphis, rural west Tennessee, Knoxville and Chattanooga."

Effective Dates.
Acts 2021, ch. 404, § 2. July 1, 2021.

Attorney General Opinions.
Reorganization of department of transportation, OAG 00-037, 2000 Tenn. AG LEXIS 37 (3/7/00).

4-29-105. Evaluation committee objectives.

The evaluation committee shall have as its objectives:

(1) The review of present programs and strategies of entities to determine the quality, efficiency, and success of such programs and strategies in implementation of legislative mandates;

(2) The continuation of successful and efficient entities that are beneficial to the citizens of the state and the modification of any organizational structure that would result in more efficient or effective service to the public;

(3) The elimination of inactive entities;

(4) The elimination of entities that duplicate other entities or other governmental programs and activities, or an appropriate consolidation of them; and

(5) The elimination of inefficient, ineffective, unnecessary or undesirable entities.

History.
Acts 1977, ch. 452, § 11; T.C.A., § 4-2911.

4-29-106. Criteria for review.

In conducting the review of governmental entities, the evaluation committee shall take into consideration the following factors:

(1) The extent to which regulatory entities have permitted qualified applicants to serve the public;

(2) The extent to which the affirmative action requirements of state and federal statutes have been complied with by the governmental entity or the industry that it regulates;

(3) The extent to which the governmental entity has recommended statutory changes to the general assembly that would benefit the public as opposed to those persons it regulates;

(4) The extent to which the governmental entity has required the persons it regulates to report to it concerning the impact of its rules and decisions on the public with respect to improvement, economy and availability of service;

(5) The extent to which persons regulated by the governmental entity have been required to assess problems in the professions or vocations that affect the public;

(6) The extent to which the governmental entity has encouraged public participation in its rules and decision making, as opposed to participation solely by the persons it regulates;

(7) The degree of efficiency with which formal public complaints concerning those persons regulated by the governmental entity have been processed to completion or forwarded to appropriate officials for completion;

(8) The extent to which the governmental entity has considered alternative methods by which other jurisdictions have attempted to achieve the same or similar program goals;

(9) The extent to which the governmental entity has considered the results of published and unpublished studies of various alternative methods of accomplishing the objectives of the entity;

(10) The extent to which the absence of regulation would endanger the public health, safety or welfare;

(11) The extent to which regulation directly or indirectly increases the

costs of goods or services to the public;

(12) The extent to which the regulatory process is designed to protect and promote the public interest and the degree to which that process has attained those objectives;

(13) The extent to which the governmental entity has operated in the public interest, and the extent to which its operations have been impeded or enhanced by existing statutory procedures, practices of the department to which it is attached for administrative purposes, or any other relevant circumstances, including budgetary, resource and personnel matters that have affected its performance with respect to its public purpose;

(14) The extent to which a need actually exists for the governmental entity to engage in any one (1) of its regulatory activities;

(15) The extent to which the statutory requirements of the agency are necessary and are being met;

(16) The extent to which the governmental entity possesses clear and specific objectives and purposes;

(17) The extent to which the agency has effectively obtained its objectives and purposes and the efficiency with which it has operated;

(18) The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulatory activity would be desirable; and

(19) The extent to which changes are necessary in the enabling statutes to adequately comply with the criteria established in this section.

History.
Acts 1977, ch. 452, § 11; T.C.A., § 4-2912; Acts 1985, ch. 269, § 1.

4-29-107. Vote to terminate entity — Recommended legislation.

If the evaluation committee by a majority vote determines that a governmental entity should be terminated, the evaluation committee shall cause to be introduced legislation necessary to transfer or abolish such entity's functions, duties and powers and repeal or amend any section of the code or the public acts that would be repealed or amended by implication if the governmental entity is terminated.

History.
Acts 1977, ch. 452, § 12; T.C.A., § 4-2913.

Attorney General Opinions.
Effect of termination of state seed board, OAG 95-052, 1995 Tenn. AG LEXIS 50 (5/15/95).

4-29-108. Vote to continue entity — Recommended amendments.

If the evaluation committee by a majority vote determines that a governmental entity should be continued, restructured or reestablished, if the duties, powers, authority or functions of the governmental entity are changed, or if the governmental entity is transferred to another department of state government for administrative purposes, the evaluation committee shall cause to be introduced legislation to amend the appropriate sections of the code or the public acts.

History.
Acts 1977, ch. 452, § 12; T.C.A., § 4-2914.

4-29-109. Periodic review or automatic termination of entities.

Each governmental entity that is continued, restructured or reestablished under §§ 4-29-107, 4-29-108 and 4-29-110 shall terminate eight (8) years following its continuation or reestablishment, and shall be subject every eight (8) years thereafter during its existence to the review and procedures provided for in this chapter.

History.
Acts 1977, ch. 452, § 12; T.C.A., § 4-2915;
Acts 1985, ch. 405, § 8.

4-29-110. Tie vote in joint evaluation committee — Action by joint review committee.

(a) If, by a tie vote of the evaluation committee, no determination of status of a government entity can be decided, the evaluation committee shall refer the final decision to the appropriate committees of the respective houses that shall meet jointly to hear the recommendations of each member of the evaluation committee.

(b) The vote of the majority of the members, present and voting, of such appropriate committees meeting jointly shall decide the final recommendation on the abolition, transfer, or continuation or restructure of the governmental entity, and the evaluation committee shall cause the introduction of legislation required by this vote.

History.
Acts 1977, ch. 452, § 12; T.C.A., § 4-2916.

4-29-111. Information, assistance, audits provided to evaluation committee.

(a) All governmental entities shall provide the evaluation committee with any information or assistance it requires.

(b) The comptroller of the treasury shall perform limited program review audits to aid the review of the evaluation committee and shall, from time to time, counsel and consult with the committee on its informational requirements on the governmental entities being reviewed.

History.
Acts 1977, ch. 452, § 13; T.C.A., § 4-2917.

Law Reviews.
Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

4-29-112. Winding up affairs of terminated entity.

Upon the termination of any governmental entity under this chapter, it shall continue in existence until June 30 of the next succeeding calendar year for the purpose of winding up its affairs. During that period, termination shall not diminish, reduce, or limit the powers or authorities of each respective govern-

mental entity. When the wind-up period expires, the governmental entity shall cease all activities.

History.
Acts 1977, ch. 452, § 14; T.C.A., § 4-2918.

Attorney General Opinions.
Effect on regulatory process by termination of the health facilities commission under the governmental entity review law, OAG 91-38, 1991 Tenn. AG LEXIS 40 (4/26/91).

Authority of local sheriff's civil service board, OAG 98-044, 1998 Tenn. AG LEXIS 44 (2/17/98).

4-29-113. Continuation of claims or rights against terminated entity.

(a) This chapter shall not cause the dismissal of any claim or right of any person against any governmental entity or any claim or right of a governmental entity terminated under this chapter that is the subject of litigation. Such claims and rights shall be assumed by the state as of the date of termination.

(b) If any entity terminated under this chapter has any outstanding bonds or other indebtedness, the state shall preserve the rights of the holders of such bonds or other indebtedness and the obligations and rights of such entity shall accrue to the state.

History.
Acts 1977, ch. 452, § 15; T.C.A., § 4-2919.

4-29-114. Recommended amendatory legislation — Form.

Any legislation that the evaluation committee causes to be introduced shall concern only one (1) governmental entity, and the name of such entity shall be contained in the caption of the bill. However, if the evaluation committee causes legislation to be introduced that would restructure two (2) or more entities by combining their functions, duties or administration, then such legislation may concern all the entities thereby restructured; provided, that the names of all such entities are contained in the caption of the bill.

History.
Acts 1977, ch. 452, § 16; 1979, ch. 8, § 1; T.C.A., § 4-2920.

Cross-References.
Provisions of section not applicable to title 37, ch. 3, part 1, concerning commission on children and youth, § 37-3-109.

4-29-115. Extension of entity's life pending action.

If any governmental entity is scheduled to be terminated before the review by the evaluation committee under this chapter is completed and before any legislative action is taken pursuant to §§ 4-29-107 — 4-29-110, such entity shall continue its operations for an additional year after which it shall cease to exist without legislation pursuant to §§ 4-29-107 — 4-29-110.

History.
Acts 1977, ch. 452, § 16; T.C.A., § 4-2921.

Attorney General Opinions.
Construction of "legislative actions," OAG 95-045, 1995 Tenn. AG LEXIS 46 (5/1/95).

4-29-116. Change or termination of entity before review date.

Nothing in this chapter shall be construed to prohibit the general assembly from terminating an entity covered by its provisions at a date earlier than that provided in this chapter, nor to prohibit the general assembly from considering any other legislation relative to such an entity.

History.
Acts 1977, ch. 452, § 17; T.C.A., § 4-2922.

4-29-117. Study and recommendations by other committees.

Nothing in this chapter shall be construed to prohibit an evaluation committee or any other committee from studying or making recommendations on or concerning any governmental entity.

History.
Acts 1977, ch. 452, § 17; T.C.A., § 4-2923.

4-29-118. Termination date of governmental entities — Review of legislation creating governmental entities.

(a) Notwithstanding any law to the contrary, each department, commission, board, agency or council of state government initially created after January 1, 1995, shall terminate on June 30 of the second calendar year following the year in which such governmental entity is created. The termination date of each such governmental entity shall be subject to the requirements of §§ 4-29-104 and 4-29-112.

(b)(1) Notwithstanding subsection (a), any legislation that creates a new department, commission, board, agency or council of state government for the purpose of providing licensing or certification, or both, for occupational or professional groups, or both, shall be referred to the government operations committee by the speaker of each house, and shall be reviewed in accordance with this subsection (b) and §§ 4-29-105 and 4-29-106, and for the purposes of such review, the government operations committee of each house shall be considered an appropriate standing committee.

(2) In conducting the review of such legislation, the government operations committees shall take into consideration the following factors:

(A) The extent to which the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the extent to which the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(B) The extent to which the profession or occupation possesses qualities that distinguish it from ordinary labor;

(C) The extent to which the practice of the profession or occupation requires specialized skill or training;

(D) The likelihood that a substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner of the profession or occupation is competent; and

(E) The degree to which the public is effectively protected by other means.

(3) The sponsor of the legislation shall have the burden of presenting to the government operations committees such data as they require to perform their evaluation of the criteria enumerated in subdivision (b)(2)(B), including, but not limited to, information as necessary to show:

(A) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety or welfare;

(B) The approximate number of people who would be regulated and the number of persons who are likely to utilize the service of the occupation or profession;

(C) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(D) That other states have regulatory provisions similar to the one proposed;

(E) How the public will benefit from regulation of the occupation or profession;

(F) How the occupation or profession will be regulated, including qualifications and disciplinary procedures to be applied to practitioners;

(G) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;

(H) That no other licensing board regulates similar or parallel functions;

(I) That the educational requirements for licensure, if any, are fully justified; and

(J) Any other information the committee considers relevant to the proposed regulatory plan.

History.

Acts 1977, ch. 452, § 18; 1979, ch. 197, § 1; T.C.A., § 4-2924; Acts 1984, ch. 719, §§ 1, 2; 1985, ch. 269, § 2; 1986, ch. 489, §§ 1, 2; 1986, ch. 622, § 1; 1995, ch. 454, § 1.

Compiler's Notes.

Acts 1995, ch. 305, § 3 provided that subsection (a) of this section does not apply to the Tennessee regulatory authority.

Attorney General Opinions.

Authority of local sheriff's civil service board, OAG 98-044, 1998 Tenn. AG LEXIS 44 (2/17/98).

Authority of senate government operations committee, OAG 99-113, 1999 Tenn. AG LEXIS 113 (5/14/99).

4-29-119. Review of entities not enumerated in chapter.

(a) If any state governmental entity is not scheduled for review in part 2 of this chapter, the comptroller of the treasury shall advise the chairs of the appropriate evaluation committee of the schedule for the limited program review audit for such entity, and such entity shall be reviewed by such evaluation committee in accordance with such schedule and every eight (8) years thereafter.

(b) It is the duty of the commissioner of finance and administration to advise the comptroller of the treasury and the chairs of the appropriate evaluation committee of any such entity.

History.
Acts 1977, ch. 452, § 19; T.C.A., § 4-2925; Acts 1985, ch. 405, § 8.

4-29-120. Notification of interested persons — Notification registry — Rules and regulations.

(a) Except as provided in subsection (f), prior to issuing a permit or hearing an appeal from a person who has been denied a permit for a proposed project or action, each department and agency of the state shall provide personal notification to all interested persons who have given the department or agency the information required pursuant to subsection (b). The notification shall be given at least fifteen (15) days prior to the issuance of a permit or hearing an appeal for the purpose of giving all interested persons an opportunity to review and comment on the proposed project or action.

(b) To effectuate subsection (a), each department and agency of the state shall create and maintain a notification registry for the purpose of allowing individuals who would be affected by the issuance of a permit to contact the department and agency and have the individual's full name and electronic mail address entered in the registry for notification purposes.

(c) Notice by mail is not required under this section. This section shall not be construed or applied to limit any other law requiring notice.

(d) The commissioner of each department or executive director of each agency is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(e) This section shall not apply to persons applying for oil and gas well permits issued by the department of environment and conservation, or to persons who appeal the department's denial of oil and gas well permits.

(f) Permits issued for subsurface sewage disposal systems pursuant to title 68, chapter 221, part 4 shall be exempt from the requirements of this section.

History.
Acts 2007, ch. 343, §§ 1, 2; 2008, ch. 828, § 1; 2008, ch. 892, §§ 1, 2.

Compiler's Notes.
Former § 4-29-120 (Acts 1977, ch. 452, § 20; T.C.A., § 4-2926), which provided for legislative advisory review of the comprehensive statewide plan for the law enforcement planning agency commission, prior to its submission to the federal law enforcement assistance administration, is obsolete.

4-29-121. Regulatory agencies not collecting fees sufficient to pay operating costs.

(a) On or before December 31 each year, the commissioner of finance and administration shall certify to the government operations committees of the senate and the house of representatives and to the office of legislative budget analysis a list containing the name of each regulatory board, commission and entity administratively attached to the division of regulatory boards within the department of commerce and insurance or to the division of health-related boards within the department of health that did not, during the preceding

fiscal year, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity.

(b) Notwithstanding this chapter to the contrary, any such board, commission or entity that is so certified by the commissioner for two (2) consecutive years shall be reviewed by a joint evaluation committee during the next legislative session following the second consecutive fiscal year during which the board, commission or entity operated at a deficit. The review of any such board, commission or entity shall be conducted in accordance with this chapter.

History.
Acts 1988, ch. 706, § 1; 2008, ch. 1191, § 2.

4-29-122. Notice to evaluation committee of transferred functions.

Any department or agency of state government whose functions, duties, or responsibilities are transferred to another department or agency shall notify in writing the evaluation committee created in § 4-29-103. The agency or department assuming responsibility for such functions, duties, or responsibilities shall be subject to review by the evaluation committee created in § 4-29-103 within two (2) years of such transfer. The evaluation committee may choose to review only those functions, duties, or responsibilities that were transferred, or the evaluation committee may choose to review in its entirety the department or agency assuming responsibility for such functions, duties, or responsibilities.

History.
Acts 1998, ch. 1125, § 1.

4-29-123. Infringement of an entity member's freedom of speech prohibited.

(a) No board, commission, council, committee, authority, task force, or other similar multi-member governmental entity created by statute and subject to review under this part shall promulgate rules, issue statements concerning only the internal management of state government, or issue intra-agency memoranda as described in § 4-5-102(12), that infringe on an entity member's freedom of speech in violation of the Constitution of Tennessee, Article I, § 19 or the First Amendment of the United States Constitution. As used in this subsection (a), "freedom of speech" includes, but is not limited to, a governmental entity member's freedom to express an opinion concerning any matter relating to that governmental entity, excluding matters deemed to be confidential under § 10-7-504.

(b) Upon a determination by a joint evaluation committee created under § 4-29-103 that reasonable cause exists to believe a governmental entity has infringed on a member's freedom of speech as described in subsection (a), that entity shall be reviewed by that evaluation committee during the next legislative session following the determination. The evaluation committee may make recommendations for legislation to the general assembly concerning the entity's sunset status and rulemaking authority, and the termination of state funding to the entity.

History.
Acts 2018, ch. 754, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-29-124. Promulgation of exemption of members from requirements of rules, policies, guidelines, or statements prohibited.

A board, commission, council, committee, authority, task force, or other similar multi-member governmental entity created by statute and subject to review under this chapter shall not promulgate rules, adopt policies or guidelines, or issue statements that exempt a member of the entity from the requirements of such rules, policies, guidelines, or statements solely by virtue of their status as a member of the entity.

History.
Acts 2021, ch. 37, § 1.

Effective Dates.
Acts 2021, ch. 37, § 2. March 23, 2021.

PART 2

TERMINATION OF ENTITIES

4-29-201 — 4-29-239. [Reserved.]

4-29-240. Governmental entities terminated on June 30, 2019.

(a) The following governmental entities shall terminate on June 30, 2019:
(1) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(2) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(3) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(4) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(5) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(6) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(7) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(8) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(9) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(10) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(11) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(12) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(13) [Deleted by 2019 amendment; transferred to § 4-29-243.]
(14) [Deleted by 2019 amendment; transferred to § 4-29-248.]
(15) [Deleted by 2019 amendment; transferred to § 4-29-245.]
(16) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(17) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(18) [Deleted by 2019 amendment; transferred to § 4-29-243.]
(19) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(20) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(21) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(22) [Deleted by 2019 amendment; transferred to § 4-29-241.]
(23) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(24) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(25) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(26) [Deleted by 2019 amendment; transferred to § 4-29-246.]

(27) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(28) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(29) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(30) [Deleted by 2019 amendment.]
(31) [Deleted by 2019 amendment; transferred to § 4-29-242.]
(32) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(33) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(34) [Deleted by 2019 amendment; transferred to § 4-29-242.]
(35) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(36) [Deleted by 2019 amendment; transferred to § 4-29-248.]
(37) [Deleted by 2019 amendment; transferred to § 4-29-248.]
(38) [Deleted by 2019 amendment; transferred to § 4-29-245.]
(39) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(40) [Deleted by 2019 amendment; transferred to § 4-29-245.]
(41) [Deleted by 2019 amendment; transferred to § 4-29-241.]
(42) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(43) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(44) [Deleted by 2019 amendment; transferred to § 4-29-248.]
(45) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(46) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(47) [Deleted by 2019 amendment; transferred to § 4-29-242.]
(48) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(49) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(50) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(51) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(52) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(53) [Deleted by 2019 amendment; transferred to § 4-29-246.]
(54) [Deleted by 2019 amendment; transferred to § 4-29-245.]
(55) [Deleted by 2019 amendment; transferred to § 4-29-244.]
(56) [Repealed by 2019 amendment.]
(57) [Deleted by 2019 amendment; transferred to § 4-29-246.]

(b) Each department, commission, board, agency, or council of state government created during calendar year 2017 terminates on June 30, 2019.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

History.

Acts 2013, ch. 6, § 2; 2013, ch. 7, § 2; 2013, ch. 11, § 2; 2013, ch. 12, § 2; 2013, ch. 14, § 2; 2013, ch. 53, § 2; 2013, ch. 77, § 2; 2013, ch. 80, § 2; 2013, ch. 129, § 2; 2013, ch. 331, § 2; 2014, ch. 491, § 2; 2014, ch. 497, § 2; 2014, ch. 513, § 2; 2014, ch. 543, § 2; 2014, ch. 566, § 2; 2014, ch. 600, § 2; 2014, ch. 603, § 2; 2014, ch. 607, § 2; 2015, ch. 2, § 2; 2015, ch. 3, § 2; 2015, ch. 4, § 2; 2015, ch. 6, § 2; 2015, ch. 7, § 2; 2015, ch. 8, § 2; 2015, ch. 9, § 2; 2015, ch. 12, § 2; 2015, ch. 17, § 2; 2015, ch. 18, § 2; 2015, ch. 31, § 2; 2015, ch. 32, § 2; 2015, ch. 35, § 2; 2015, ch. 37, § 2; 2015, ch. 62, § 2; 2015, ch. 64, § 2; 2015, ch. 86, § 2; 2015, ch. 90, § 2; 2015, ch. 128, § 2; 2015, ch. 129, § 2; 2015, ch. 191, § 2; 2015, ch. 204, § 2; 2015, ch. 205, § 2; 2015, ch. 206, § 2; 2015, ch. 229, § 2; 2015, ch. 385, § 2; 2015, ch. 418, § 2; 2016, ch. 537, § 2; 2016, ch. 550, § 2; 2016, ch. 774, § 2; 2017, ch. 78, § 2; 2017, ch. 86, § 4; 2017, ch. 117, § 2; 2017, ch. 320, § 2; 2017, ch. 322, § 2; 2017, ch. 400, § 1; 2017, ch. 434, § 2; 2017, ch. 444, § 2; 2017, ch. 458, § 1; 2018, ch. 707, § 1; 2018, ch. 711, § 1; 2019, ch. 14, § 1; 2019, ch. 15, § 1; 2019, ch. 16, § 1; 2019, ch. 17, § 1; 2019, ch. 18, § 1; 2019, ch. 19, § 1; 2019, ch. 20, § 1; 2019, ch. 21, § 1; 2019, ch. 22, § 1; 2019, ch. 23, § 1; 2019, ch. 24, § 1; 2019, ch. 25, § 1; 2019, ch. 26, § 1; 2019, ch. 27, § 1; 2019, ch. 28, § 1; 2019, ch. 29, § 1;

2019, ch. 30, § 1; 2019, ch. 31, § 1; 2019, ch. 32, § 1; 2019, ch. 33, § 1; 2019, ch. 34, § 1; 2019, ch. 43, § 1; 2019, ch. 46, § 1; 2019, ch. 47, § 1; 2019, ch. 48, § 1; 2019, ch. 49, § 1; 2019, ch. 50, § 1; 2019, ch. 51, § 1; 2019, ch. 52, § 1; 2019, ch. 53, § 1; 2019, ch. 54, § 1; 2019, ch. 55, § 1; 2019, ch. 56, § 1; 2019, ch. 57, § 1; 2019, ch. 58, § 1; 2019, ch. 113, § 1; 2019, ch. 114, § 1; 2019, ch. 115, § 1; 2019, ch. 166, § 1; 2019, ch. 212, § 1; 2019, ch. 285, § 1; 2019, ch. 286, § 1; 2019, ch. 287, § 1; 2019, ch. 288, § 1; 2019, ch. 289, § 1; 2019, ch. 290, § 1; 2019, ch. 291, § 1; 2019, ch. 292, § 1; 2019, ch. 293, § 1; 2019, ch. 294, § 1; 2019, ch. 295, § 1; 2019, ch. 296, § 1; 2019, ch. 297, § 1; 2019, ch. 298, § 1; 2019, ch. 299, § 1; 2019, ch. 333, § 1; 2019, ch. 334, § 1; 2019, ch. 336, § 1; 2019, ch. 368, § 1; 2019, ch. 369, § 1; 2019, ch. 444, § 1; 2019, ch. 493, § 1.

Compiler's Notes.

Acts 2015, ch. 31, § 3 provides that the Bureau of TennCare shall appear before the Government Operations Joint Evaluation Committee on Judiciary and Government no later than September 20, 2015, to update the Committee on the Bureau's progress in addressing the findings set forth in the December 2014 performance audit report.

For the Preamble to the act concerning the encouragement of economic growth and to support recreational releases on the Ocoee River, please refer to Acts 2017, ch. 434.

For the Preamble to the act concerning the creation of the Tennessee energy policy council, please refer to Acts 2017, ch. 458.

4-29-241. Governmental entities terminated on June 30, 2020.

(a) The following governmental entities shall terminate on June 30, 2020:

(1) [Deleted by 2020 amendment; transferred to § 4-29-248.]
(2) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(3) [Deleted by 2020 amendment; transferred to § 4-29-242.]
(4) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(5) [Deleted by 2020 amendment; transferred to § 4-29-244.]
(6) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(7) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(8) [Deleted by 2020 amendment; transferred to § 4-29-244.]
(9) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(10) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(11) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(12) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(13) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(14) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(15) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(16) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(17) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(18) [Deleted by 2020 amendment; transferred to § 4-29-244.]
(19) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(20) [Deleted by 2020 amendment; transferred to § 4-29-244.]
(21) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(22) [Deleted by 2020 amendment; transferred to § 4-29-244.]
(23) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(24) [Deleted by 2020 amendment; transferred to § 4-29-248.]
(25) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(26) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(27) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(28) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(29) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(30) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(31) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(32) [Deleted by 2020 amendment; transferred to § 4-29-243.]

(33) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(34) [Terminated by 2020 amendment.]
(35) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(36) [Deleted by 2021 amendment; transferred to § 4-29-243.]
(37) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(38) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(39) [Deleted by 2020 amendment; transferred to § 4-29-242.]
(40) [Deleted by 2020 amendment.]
(41) [Deleted by 2020 amendment.]
(42) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(43) [Deleted by 2020 amendment; transferred to § 4-29-248.]
(44) [Terminated by 2021 amendment.]
(45) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(46) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(47) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(48) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(49) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(50) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(51) [Deleted by 2020 amendment; transferred to § 4-29-248.]
(52) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(53) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(54) [Deleted by 2019 amendment; transferred to § 4-29-242.]
(55) [Deleted by 2020 amendment; transferred to § 4-29-242.]
(56) [Deleted by 2016 amendment, commission terminated.]
(57) [Deleted by 2020 amendment; transferred to § 4-29-243.]
(58) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(59) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(60) [Deleted by 2020 amendment; transferred to § 4-29-248.]
(61) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(62) [Deleted by 2020 amendment; transferred to § 4-29-246.]
(63) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(64) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(65) [Deleted by 2020 amendment; transferred to § 4-29-249.]
(66) [Deleted by 2020 amendment; transferred to § 4-29-245.]
(67) [Deleted by 2020 amendment; transferred to § 4-29-247.]
(68) [Deleted by 2020 amendment; transferred to § 4-29-243.]
(69) [Deleted by 2020 amendment; transferred to § 4-29-249.]

(b) Each department, commission, board, agency or council of state government created during calendar year 2018 terminates on June 30, 2020.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished or restructured in accordance with this chapter.

History.

Acts 2014, ch. 490, § 2; 2014, ch. 496, § 2; 2014, ch. 510, § 2; 2014, ch. 516, § 2; 2014, ch. 517, § 2; 2014, ch. 518, § 2; 2014, ch. 519, § 2; 2014, ch. 520, § 2; 2014, ch. 526, § 2; 2014, ch. 541, § 2; 2014, ch. 580, § 2; 2014, ch. 601 § 2; 2014, ch. 604 § 2; 2014, ch. 605 § 2; 2014, ch. 606 § 2; 2014, ch. 608 § 2; 2014, ch. 665, § 2; 2015, ch. 1, § 2; 2015, ch. 5, § 2; 2015, ch. 13, § 2; 2015, ch. 36, § 2; 2015, ch. 66, § 2; 2015, ch. 144, § 2; 2015, ch. 145, § 2; 2015, ch. 146, § 2; 2015, ch. 259, § 2; 2016, ch. 540, § 2; 2016, ch. 544, § 2; 2016, ch. 545, § 2; 2016, ch. 549, § 2; 2016, ch. 556, § 2; 2016, ch. 560, § 2; 2016,

ch. 564, § 2; 2016, ch. 608, § 2; 2016, ch. 610, § 2; 2016, ch. 614, § 2; 2016, ch. 619, § 1; 2016, ch. 639, § 2; 2016, ch. 776, § 2; 2016, ch. 846, § 2; 2017, ch. 2, § 2; 2017, ch. 37, § 2; 2017, ch. 45, § 2; 2017, ch. 50, § 2; 2017, ch. 53, § 2; 2017, ch. 56, § 2; 2017, ch. 58, § 2; 2017, ch. 60, § 2; 2017, ch. 61, § 2; 2017, ch. 62, § 2; 2017, ch. 63, § 2; 2017, ch. 64, § 2; 2017, ch. 318, § 2; 2017, ch. 327, § 2; 2018, ch. 506, § 2; 2018, ch. 512, § 2; 2018, ch. 524, § 2; 2018, ch. 594, § 2; 2018, ch. 711, § 2; 2018, ch. 803, § 1; 2018, ch. 928, § 2; 2018, ch. 987, § 2; 2018, ch. 988, § 2; 2018, ch. 1034, § 2; 2018, ch. 1035, § 2; 2018, ch. 1043, § 2; 2019, ch. 58, § 2; 2019, ch. 73, § 2; 2019, ch. 305, § 1; 2019, ch. 334, § 2; 2019, ch. 335, § 1; 2020, ch. 537, § 1; 2020, ch. 538, § 1; 2020, ch. 539, § 1; 2020, ch. 540, § 1; 2020, ch. 541, § 1; 2020, ch. 542, § 1; 2020, ch. 543, § 1; 2020, ch. 544, § 1; 2020, ch. 545, § 1; 2020, ch. 546, § 1; 2020, ch. 547, § 1; 2020, ch. 548, § 1; 2020, ch. 549, § 1; 2020, ch. 550, § 1; 2020, ch. 551, § 1; 2020, ch. 552, § 1; 2020, ch. 553, § 1; 2020, ch. 554, § 1; 2020, ch. 555, § 1; 2020, ch. 556, § 1; 2020, ch. 557, § 1; 2020, ch. 558, § 1; 2020, ch. 559, § 1; 2020, ch. 560, § 1; 2020, ch. 561, § 1; 2020, ch. 562, § 1; 2020, ch. 563, § 1; 2020, ch. 564, § 1; 2020, ch. 565, § 1; 2020, ch. 566, § 1; 2020, ch. 567, § 1; 2020, ch. 568, § 1; 2020, ch. 569, § 1; 2020, ch. 611, § 1; 2020, ch. 612, § 1; 2020, ch. 613, § 1; 2020, ch. 614, § 1; 2020, ch. 615, § 1; 2020, ch. 616, § 1; 2020, ch. 617, § 1; 2020, ch. 633, § 1; 2020, ch. 634, § 1; 2020, ch. 637, § 1; 2020, ch. 638, § 1; 2020, ch. 639, § 1; 2020, ch. 640, § 14; 2020, ch. 641, § 1; 2020, ch. 656, § 1; 2020, ch. 657, § 1; 2020, ch. 661, § 1; 2020, ch. 662, § 1; 2020, ch. 663, § 1; 2020, ch. 664, § 1; 2020, ch. 665, § 1; 2020, ch. 666, § 1; 2020, ch. 667, § 1; 2020, ch. 671, § 1; 2020, ch. 672, § 1; 2020, ch. 678, § 1; 2020, ch. 695, § 1; 2020, ch. 702, § 1; 2020, ch. 767, § 1; 2020, ch. 768, § 1; 2020, ch. 769, § 1; 2021, ch. 209, § 1; 2021, ch. 325, § 1.

Compiler's Notes.

Subdivision (a)(44), concerning the state board for licensing alarm systems contractors, created by § 62-32-306, was deleted from this section due to the repeal of § 62-32-306, by by Acts 2021, ch. 294, § 22, effective July 1, 2021.

Amendments.

The 2021 amendment by ch. 209 deleted (a)(64) which read: "Tennessee radiologic imaging and radiation therapy board of examiners, created by § 63-6-901;", which was transferred to § 4-29-246 by Acts 2021, ch. 209, § 2, effective April 22, 2021.

The 2021 amendment by ch. 325 deleted (a)(36), which read: "Polysomnography professional standards committee, created by § 63-31-103;", which was transferred to § 4-29-243 by Acts 2021, ch. 325, § 2, effective May 4, 2021.

Effective Dates.

Acts 2021, ch. 209, § 3. April 22, 2021.

Acts 2021, ch. 325, § 3. May 4, 2021.

4-29-242. Governmental entities terminated on June 30, 2021.

(a) The following governmental entities terminate on June 30, 2021:

(1) [Deleted by 2021 amendment; transferred to § 4-29-246.]

(2) [Deleted by 2021 amendment; transferred to § 4-29-248.]

(3) [Deleted by 2021 amendment; transferred to § 4-29-248.]

(4) [Deleted by 2021 amendment; transferred to § 4-29-250.]

(5) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(6) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(7) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(8) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(9) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(10) [Deleted by 2021 amendment.]

(11) [Deleted by 2021 amendment; transferred to § 4-29-244.]

(12) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(13) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(14) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(15) [Deleted by 2021 amendment; transferred to § 4-29-248.]

(16) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(17) [Deleted by 2021 amendment; transferred to § 4-29-243.]

(18) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(19) [Deleted by 2021 amendment; transferred to § 4-29-244.]

(20) [Deleted by 2021 amendment; transferred to § 4-29-246.]

(21) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(22) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(23) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(24) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(25) [Terminated by 2021 amendment.]
(26) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(27) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(28) [Deleted by 2021 amendment; transferred to § 4-29-245, effective October 1, 2021.]
(29) [Deleted by 2018 amendment; transferred to § 4-29-241.]
(30) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(31) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(32) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(33) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(34) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(35) [Deleted by 2021 amendment; transferred to § 4-29-249.]
(36) [Deleted by 2021 amendment; transferred to § 4-29-250.]
(37) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(38) [Deleted by 2021 amendment; transferred to § 4-29-245.]
(39) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(40) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(41) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(42) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(43) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(44) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(45) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(46) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(47) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(48) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(49) [Deleted by 2021 amendment; transferred to § 4-29-244.]
(50) [Deleted by 2021 amendment; transferred to § 4-29-244.]
(51) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(52) [Deleted by 2021 amendment; transferred to § 4-29-250.]
(53) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(54) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(55) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(56) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(57) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(58) [Deleted by 2021 amendment; transferred to § 4-29-247.]
(59) [Deleted by 2021 amendment; transferred to § 4-29-250.]
(60) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(61) [Deleted by 2021 amendment; transferred to § 4-29-244.]
(62) [Deleted by 2021 amendment; transferred to § 4-29-248.]
(63) [Deleted by 2021 amendment; transferred to § 4-29-250.]
(64) [Deleted by 2021 amendment; transferred to § 4-29-244.]
(65) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(66) [Deleted by 2021 amendment; transferred to § 4-29-246.]
(67) [Deleted by 2021 amendment; transferred to § 4-29-246.]

(68) [Deleted by 2021 amendment; transferred to § 4-29-248.]

(69) [Deleted by 2021 amendment; transferred to § 4-29-247.]

(b) Each department, commission, board, agency, or council of state government created during calendar year 2019 shall terminate on June 30, 2021.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2015, ch. 96, § 2; 2015, ch. 97, § 2; 2015, ch. 98, § 2; 2015, ch. 100, § 2; 2015, ch. 101, § 2; 2015, ch. 102, § 2; 2015, ch. 103, § 2; 2015, ch. 104, § 2; 2015, ch. 105, § 2; 2015, ch. 106, § 2; 2015, ch. 107, § 2; 2015, ch. 108, § 2; 2015, ch. 109, § 2; 2015, ch. 147, § 2; 2015, ch. 148, § 2; 2015, ch. 149, § 2; 2015, ch. 150, § 2; 2015, ch. 151, § 2; 2015, ch. 174, § 2; 2016, ch. 539, § 2; 2016, ch. 542, § 2; 2017, ch. 38, § 2; 2017, ch. 39, § 2; 2017, ch. 40, § 2; 2017, ch. 41, § 2; 2017, ch. 42, § 2; 2017, ch. 43, § 2; 2017, ch. 44, § 2; 2017, ch. 46, § 2; 2017, ch. 47, § 2; 2017, ch. 49, § 2; 2017, ch. 51, § 2; 2017, ch. 52, § 2; 2017, ch. 59, § 2; 2017, ch. 68, § 2; 2017, ch. 70, § 2; 2017, ch. 73, § 2; 2017, ch. 75, § 2; 2017, ch. 77, § 2; 2017, ch. 94, § 6; 2017, ch. 115, § 2; 2017, ch. 116, § 2; 2017, ch. 315, § 2; 2017, ch. 316, § 2; 2017, ch. 317, § 2; 2017, ch. 319, § 2; 2017, ch. 321, § 2; 2017, ch. 323, § 2; 2017, ch. 435, § 2; 2018, ch. 518, § 2; 2018, ch. 530, § 2; 2018, ch. 653, § 2; 2018, ch. 702, § 2; 2018, ch. 928, § 1; 2019, ch. 49, § 2; 2019, ch. 57, § 2; 2019, ch. 219, § 102; 2019, ch. 294, § 2; 2019, ch. 295, § 2; 2019, ch. 296, § 2; 2019, ch. 297, § 2; 2019, ch. 298, § 2; 2019, ch. 299, § 2; 2019, ch. 335, § 2; 2019, ch. 364, § 1; 2019, ch. 369, § 2; 2019, ch. 406, § 2; 2019, ch. 444, § 4; 2020, ch. 637, § 2; 2020, ch. 767, § 2; 2020, ch. 769, § 2; 2021, ch. 2, § 1; 2021, ch. 3, § 1; 2021, ch. 4, § 1; 2021, ch. 5, § 1; 2021, ch. 6, § 1; 2021, ch. 7, § 1; 2021, ch. 8, § 1; 2021, ch. 9, § 1; 2021, ch. 10, § 1; 2021, ch. 11, § 1; 2021, ch. 12, § 1; 2021, ch. 13, § 1; 2021, ch. 14, § 1; 2021, ch. 15, § 1; 2021, ch. 16, § 1; 2021, ch. 17, § 1; 2021, ch. 18, § 1; 2021, ch. 19, § 1; 2021, ch. 20, § 1; 2021, ch. 21, § 1; 2021, ch. 22, § 1; 2021, ch. 23, § 1; 2021, ch. 24, § 1; 2021, ch. 25, § 1; 2021, ch. 26, § 1; 2021, ch. 27, § 1; 2021, ch. 28, § 1; 2021, ch. 29, § 1; 2021, ch. 30, § 1; 2021, ch. 31, § 1; 2021, ch. 32, § 1; 2021, ch. 41, § 1; 2021, ch. 42, § 1; 2021, ch. 43, § 1; 2021, ch. 44, § 1; 2021, ch. 45, § 1; 2021, ch. 46, § 1; 2021, ch. 47, § 1; 2021, ch. 48, § 1; 2021, ch. 49, § 1; 2021, ch. 50, § 1; 2021, ch. 51, § 1; 2021, ch. 52, § 1; 2021, ch. 53, § 1; 2021, ch. 54, § 1; 2021, ch. 71, § 1; 2021, ch. 72, § 1; 2021, ch. 73, § 1; 2021, ch. 74, § 1; 2021, ch. 75, § 1; 2021, ch. 81, § 1; 2021, ch. 82, § 1; 2021, ch. 109, § 1; 2021, ch. 110, § 1; 2021, ch. 111, § 1; 2021, ch. 159, § 1; 2021, ch. 224, § 1; 2021, ch. 239, § 1; 2021, ch. 288, § 1; 2021, ch. 312, § 1; 2021, ch. 313, § 1; 2021, ch. 314, § 1; 2021, ch. 315, § 1; 2021, ch. 316, § 1; 2021, ch. 317, § 1; 2021, ch. 318, § 1; 2021, ch. 349, § 1; 2021, ch. 557, § 2; 2021, ch. 565, § 1.

Amendments.

The 2021 amendment by ch. 2 deleted the former provisions in (a) concerning the beef promotion board, created by § 43-19-118, which was transferred to § 4-29-250 by Acts 2021, ch. 2, § 2, effective March 23, 2021.

The 2021 amendment by ch. 3 deleted the former provisions in (a) concerning the board of chiropractic examiners, created by § 63-4-102, which was transferred to § 4-29-247 by Acts 2021, ch. 3, § 2, effective March 23, 2021.

The 2021 amendment by ch. 4 deleted the former provisions in (a) concerning the board of communication disorders and sciences, created by § 63-17-104, which was transferred to § 4-29-247 by Acts 2021, ch. 4, § 2, effective March 23, 2021.

The 2021 amendment by ch. 5 deleted the former provisions in (a) concerning the board of dentistry, created by § 63-5-101, which was transferred to § 4-29-247 by Acts 2021, ch. 5, § 2, effective March 23, 2021.

The 2021 amendment by ch. 6 deleted the former provisions in (a) concerning the board of dispensing opticians, created by § 63-14-101, which was transferred to § 4-29-247 by Acts 2021, ch. 6, § 2, effective March 23, 2021.

The 2021 amendment by ch. 7 deleted the former provisions in (a) concerning the board of medical examiners' committee on physician assistants, created by § 63-19-103, which was transferred to § 4-29-247 by Acts 2021, ch. 7, § 2, effective March 23, 2021. However, the board was subsequently repealed by Acts 2021, ch. 565, § 1.

The 2021 amendment by ch. 8 deleted the former provisions in (a) concerning the board of optometry, created by § 63-8-103, which was transferred to § 4-29-247 by Acts 2021, ch. 8, § 2, effective March 23, 2021.

The 2021 amendment by ch. 9 deleted the former provisions in (a) concerning the board of podiatric medical examiners, created by § 63-3-103, which was transferred to § 4-29-247 by Acts 2021, ch. 9, § 2, effective March 23, 2021.

The 2021 amendment by ch. 10 deleted the former provisions in (a) concerning the board of veterinary medical examiners, created by § 63-12-104, which was transferred to § 4-29-247 by Acts 2021, ch. 10, § 2, effective March 23, 2021.

The 2021 amendment by ch. 11 deleted the former provisions in (a) concerning the Delta human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 11, § 2, effective March 23, 2021.

The 2021 amendment by ch. 12 deleted the former provisions in (a) concerning the department of mental health and substance abuse services, created by §§ 4-3-101 and 4-3-1601, which was transferred to § 4-29-246 by Acts 2021, ch. 12, § 2, effective March 23, 2021.

The 2021 amendment by ch. 13 deleted the former provisions in (a) concerning the East Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 13, § 2, effective March 23, 2021.

The 2021 amendment by ch. 14 deleted the former provisions in (a) concerning the egg promotion board, which was terminated by Acts 2021, ch. 14, § 2, effective March 23, 2021.

The 2021 amendment by ch. 15 deleted the former provisions in (a) concerning the First Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 15, § 2, effective March 23, 2021.

The 2021 amendment by ch. 16 deleted the former provisions in (a) concerning the James K. Polk memorial association, created by § 4-13-201, which was transferred to § 4-29-248 by Acts 2021, ch. 16, § 2, effective March 23, 2021.

The 2021 amendment by ch. 17 deleted the former provisions in (a) concerning the Mid-Cumberland human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 17, § 2, effective March 23, 2021.

The 2021 amendment by ch. 18 deleted the former provisions in (a) concerning the Northwest Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 18, § 2, effective March 23, 2021.

The 2021 amendment by ch. 19 deleted the former provisions in (a) concerning the Ocoee River recreation and economic development fund board, created by § 11-8-104, which was transferred to § 4-29-249 by Acts 2021, ch. 19, § 2, effective March 23, 2021.

The 2021 amendment by ch. 20 deleted the former provisions in (a) concerning the pork promotion board, created by § 43-29-119, which was transferred to § 4-29-250 by Acts 2021, ch. 20, § 2, effective March 23, 2021.

The 2021 amendment by ch. 21 deleted the former provisions in (a) concerning the private probation services council, created by § 16-3-901, which was transferred to § 4-29-246 by Acts 2021, ch. 21, § 2, effective March 23, 2021.

The 2021 amendment by ch. 22 deleted the former provisions in (a) concerning the South Central Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-248 by Acts 2021, ch. 22, § 2, effective March 23, 2021.

The 2021 amendment by ch. 23 deleted the former provisions in (a) concerning the Southeast Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-248 by Acts 2021, ch. 23, § 2, effective March 23, 2021.

The 2021 amendment by ch. 24 deleted the former provisions in (a) concerning the Southeastern Interstate Forest Fire Protection Compact, created by § 11-4-501, which was transferred to § 4-29-248 by Acts 2021, ch. 24, § 2, effective March 23, 2021.

The 2021 amendment by ch. 25 deleted the former provisions in (a) concerning the Southwest Tennessee human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 25, § 2, effective March 23, 2021.

The 2021 amendment by ch. 26 deleted the former provisions in (a) concerning the state Alzheimer's disease and related dementia advisory council, created by § 71-2-117, which was transferred to § 4-29-247 by Acts 2021, ch. 26, § 2, effective March 23, 2021.

The 2021 amendment by ch. 27 deleted the former provisions in (a) concerning the state board of examiners for land surveyors, created by § 62-18-103, which was transferred to § 4-29-248 by Acts 2021, ch. 27, § 2, effective March 23, 2021.

The 2021 amendment by ch. 28 deleted the former provisions in (a) concerning the state forestry commission, created by § 11-4-201, which was transferred to § 4-29-248 by Acts 2021, ch. 28, § 2, effective March 23, 2021.

The 2021 amendment by ch. 29 deleted the former provisions in (a) concerning the statewide planning and policy council for the department of mental health and substance abuse services, created by § 33-1-401, which was transferred to § 4-29-248 by Acts 2021, ch. 29, § 2, effective March 23, 2021.

The 2021 amendment by ch. 30 deleted the former provisions in (a) concerning the Tennessee advisory commission on intergovernmental relations, created by § 4-10-102, which was transferred to § 4-29-250 by Acts 2021, ch. 30, § 2, effective March 23, 2021.

The 2021 amendment by ch. 31 deleted the former provisions in (a) concerning the Tennessee aeronautics commission, created by § 42-2-301, which was transferred to § 4-29-248 by Acts 2021, ch. 31, § 2, effective March 23, 2021.

The 2021 amendment by ch. 32 deleted the former provisions in (a) concerning the Tennessee athletic commission, created by § 68-115-103, which was transferred to § 4-29-246 by Acts 2021, ch. 32, § 2, effective March 23, 2021.

The 2021 amendment by ch. 41 deleted the former provisions in (a) concerning the advisory council on workers' compensation, created by § 50-6-121, which was transferred to § 4-29-

246 by Acts 2021, ch. 41, § 2, effective March 29, 2021.

The 2021 amendment by ch. 42 deleted the former provisions in (a) concerning the department of economic and community development, created by §§ 4-3-101 and 4-3-701, which was transferred to § 4-29-246 by Acts 2021, ch. 42, § 2, effective March 29, 2021.

The 2021 amendment by ch. 43 deleted the former provisions in (a) concerning the department of financial institutions, created by §§ 4-3-101 and 4-3-401, which was transferred to § 4-29-246 by Acts 2021, ch. 43, § 2, effective March 29, 2021.

The 2021 amendment by ch. 44 deleted the former provisions in (a) concerning the Tennessee bureau of investigation, created by § 38-6-101, which was transferred to § 4-29-246 by Acts 2021, ch. 44, § 2, effective March 29, 2021.

The 2021 amendment by ch. 45 deleted the former provisions in (a) concerning the Tennessee council for career and technical education, created by § 49-11-201, which was transferred to § 4-29-247 by Acts 2021, ch. 45, § 2, effective March 29, 2021.

The 2021 amendment by ch. 46 deleted the former provisions in (a) concerning the Tennessee council on autism spectrum disorder, created by § 4-3-2711, which was transferred to § 4-29-247 by Acts 2021, ch. 46, § 2, effective March 29, 2021.

The 2021 amendment by ch. 47 deleted the former provisions in (a) concerning the Tennessee dairy promotion committee, created by § 44-19-114, which was transferred to § 4-29-250 by Acts 2021, ch. 47, § 2, effective March 29, 2021.

The 2021 amendment by ch. 48 deleted the former provisions in (a) concerning the Tennessee financial literacy commission, created by § 49-6-1702, which was transferred to § 4-29-248 by Acts 2021, ch. 48, § 2, effective March 29, 2021.

The 2021 amendment by ch. 49 deleted the former provisions in (a) concerning the Tennessee public charter school commission, as created by § 49-13-105, which was transferred to § 4-29-244 by Acts 2021, ch. 49, § 2, effective March 29, 2021.

The 2021 amendment by ch. 50 deleted the former provisions in (a) concerning the Tennessee public utility commission, created by § 65-1-101, which was transferred to § 4-29-248 by Acts 2021, ch. 50, § 2, effective March 29, 2021.

The 2021 amendment by ch. 51 deleted the former provisions in (a) concerning the Tennessee soybean promotion board, created by § 43-20-102, which was transferred to § 4-29-250 by Acts 2021, ch. 51, § 2, effective March 29, 2021.

The 2021 amendment by ch. 52 deleted the former provisions in (a) concerning the Tennessee technology development corporation, created by § 4-14-301, which was transferred to § 4-29-246 by Acts 2021, ch. 52, § 2, effective March 29, 2021.

The 2021 amendment by ch. 53 deleted the former provisions in (a) concerning the Tennessee wine and grape board, created by § 57-3-1101, which was transferred to § 4-29-246 by Acts 2021, ch. 53, § 2, effective March 29, 2021.

The 2021 amendment by ch. 54 deleted the former provisions in (a) concerning the Upper Cumberland human resource agency, created by § 13-26-102, which was transferred to § 4-29-247 by Acts 2021, ch. 54, § 2, effective March 29, 2021.

The 2021 amendment by ch. 71 deleted the former provisions in (a) concerning the board of examiners in psychology, created by § 63-11-101, which was transferred to § 4-29-247 by Acts 2021, ch. 71, § 2, effective March 29, 2021.

The 2021 amendment by ch. 72 deleted the former provisions in (a) concerning the committee for providing competitive integrated employment for individuals with severe disabilities, created by § 71-4-703, which was transferred to § 4-29-247 by Acts 2021, ch. 72, § 2, effective March 29, 2021.

The 2021 amendment by ch. 73 deleted the former provisions in (a) concerning the emergency communications board, created by § 7-86-302, which was transferred to § 4-29-246 by Acts 2021, ch. 73, § 2, effective March 29, 2021.

The 2021 amendment by ch. 74 deleted the former provisions in (a) concerning the occupational safety and health review commission, created by § 50-3-801, which was transferred to § 4-29-248 by Acts 2021, ch. 74, § 2, effective March 29, 2021.

The 2021 amendment by ch. 75 deleted the former provisions in (a) concerning the Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-244 by Acts 2021, ch. 75, § 2, effective March 29, 2021.

The 2021 amendment by ch. 81 deleted the former provisions in (a) concerning the regional transportation authority of Middle Tennessee, created by § 64-8-101, which was transferred to § 4-29-245 by Acts 2021, ch. 81, § 2, effective March 31, 2021.

The 2021 amendment by ch. 82 deleted the former provisions in (a) concerning the alcoholic beverage commission, created by § 57-1-102, which was transferred to § 4-29-248 by Acts 2021, ch. 82, § 2, effective March 31, 2021.

The 2021 amendment by ch. 109 deleted the former provisions in (a) concerning the second look commission, created by § 37-3-803, which was transferred to § 4-29-246 by Acts 2021, ch. 109, § 2, effective April 13, 2021.

The 2021 amendment by ch. 110 deleted the former provisions in (a) concerning the state TennCare pharmacy advisory committee, created by § 71-5-2401, which was transferred to § 4-29-248 by Acts 2021, ch. 110, § 2, effective April 13, 2021.

The 2021 amendment by ch. 111 deleted the former provisions in (a) concerning the Tennessee board of judicial conduct, created by § 17-5-201, which was transferred to § 4-29-246 by Acts 2021, ch. 111, § 2, effective April 13, 2021.

The 2021 amendment by ch. 159 deleted the former provisions in (a) concerning the state textbook and instructional materials quality commission, created by § 49-6-2201, which was transferred to § 4-29-244 by Acts 2021, ch. 159, § 2, effective April 20, 2021.

The 2021 amendment by ch. 224 deleted the former provisions in (a) concerning statewide community services agency, created by § 37-5-305, which was transferred to § 4-29-244 by Acts 2021, ch. 224, § 2, effective April 22, 2021.

The 2021 amendment by ch. 239 deleted the former provisions in (a) concerning bureau of ethics and campaign finance, created by § 4-55-101, which was transferred to § 4-29-248 by Acts 2021, ch. 239, § 2, effective April 28, 2021.

The 2021 amendment by ch. 288 deleted the former provisions in (a) concerning board of nursing, created by § 63-7-201, which was transferred to § 4-29-244 by Acts 2021, ch. 288, § 2, effective April 30, 2021.

The 2021 amendment by ch. 312 deleted the former provisions in (a) concerning Austin Peay State University, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-248 by Acts 2021, ch. 312, § 2, effective May 4, 2021.

The 2021 amendment by ch. 313 deleted the former provisions in (a) concerning East Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-248 by Acts 2021, ch. 313, § 2, effective May 4, 2021.

The 2021 amendment by ch. 314 deleted the former provisions in (a) concerning Middle Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-248 by Acts 2021, ch. 314, § 2, effective May 4, 2021.

The 2021 amendment by ch. 315 deleted the former provisions in (a) concerning state board of equalization, created by § 4-3-5101, which was transferred to § 4-29-248 by Acts 2021, ch. 315, § 2, effective May 4, 2021.

The 2021 amendment by ch. 316 deleted the former provisions in (a) concerning Tennessee Technological University, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-246 by Acts 2021, ch. 316, § 2, effective May 4, 2021.

The 2021 amendment by ch. 317 deleted the former provisions in (a) concerning University of Memphis, board of trustees, created by §§ 49-8-101 and 49-8-201, which was transferred to § 4-29-248 by Acts 2021, ch. 317, § 2, effective May 4, 2021.

The 2021 amendment by ch. 318 deleted the former provisions in (a) concerning department of children's services, created by §§ 4-3-101 and 37-5-101, which was transferred to § 4-29-244 by Acts 2021, ch. 318, § 2, effective May 4, 2021.

The 2021 amendment by ch. 349 deleted the former provisions in (a) concerning consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118, which was transferred to § 4-29-243 by Acts 2021, ch. 349, § 2, effective June 30, 2021.

The 2021 amendment by ch. 557 deleted former (a)(28) which read: "Health services and development agency, created by § 68-11-1604;", which was transferred to § 4-29-245 by Acts 2021, ch. 557, § 2, effective October 1, 2021.

The 2021 amendment by ch. 565 deleted former (a)(10) which read: "Board of medical examiners' committee on physician assistants, created by § 63-19-103;" effective May 26, 2021.

Effective Dates.

Acts 2021, ch. 2. § 3. March 23, 2021.
Acts 2021, ch. 3. § 3. March 23, 2021.
Acts 2021, ch. 4. § 3. March 23, 2021.
Acts 2021, ch. 5. § 3. March 23, 2021.
Acts 2021, ch. 6. § 3. March 23, 2021.
Acts 2021, ch. 7. § 3. March 23, 2021.
Acts 2021, ch. 8. § 3. March 23, 2021.
Acts 2021, ch. 9. § 3. March 23, 2021.
Acts 2021, ch. 10. § 3. March 23, 2021.
Acts 2021, ch. 11. § 3. March 23, 2021.
Acts 2021, ch. 12. § 3. March 23, 2021.
Acts 2021, ch. 13. § 3. March 23, 2021.
Acts 2021, ch. 14. § 4. March 23, 2021.
Acts 2021, ch. 15. § 3. March 23, 2021.
Acts 2021, ch. 16. § 3. March 23, 2021.
Acts 2021, ch. 17. § 3. March 23, 2021.
Acts 2021, ch. 18. § 3. March 23, 2021.
Acts 2021, ch. 19. § 3. March 23, 2021.
Acts 2021, ch. 20. § 3. March 23, 2021.
Acts 2021, ch. 21. § 3. March 23, 2021.
Acts 2021, ch. 22. § 3. March 23, 2021.
Acts 2021, ch. 23. § 3. March 23, 2021.
Acts 2021, ch. 24. § 3. March 23, 2021.
Acts 2021, ch. 25. § 3. March 23, 2021.
Acts 2021, ch. 26. § 3. March 23, 2021.
Acts 2021, ch. 27. § 3. March 23, 2021.
Acts 2021, ch. 28. § 3. March 23, 2021.
Acts 2021, ch. 29. § 3. March 23, 2021.
Acts 2021, ch. 30. § 3. March 23, 2021.
Acts 2021, ch. 31. § 3. March 23, 2021.
Acts 2021, ch. 32. § 3. March 23, 2021.
Acts 2021, ch. 41. § 3. March 29, 2021.
Acts 2021, ch. 42. § 3. March 29, 2021.
Acts 2021, ch. 43. § 3. March 29, 2021.
Acts 2021, ch. 44. § 3. March 29, 2021.
Acts 2021, ch. 45. § 3. March 29, 2021.
Acts 2021, ch. 46. § 3. March 29, 2021.
Acts 2021, ch. 47. § 3. March 29, 2021.
Acts 2021, ch. 48. § 3. March 29, 2021.
Acts 2021, ch. 49. § 3. March 29, 2021.
Acts 2021, ch. 50. § 3. March 29, 2021.
Acts 2021, ch. 51. § 3. March 29, 2021.
Acts 2021, ch. 52. § 3. March 29, 2021.

Acts 2021, ch. 53. § 3. March 29, 2021.
Acts 2021, ch. 54. § 3. March 29, 2021.
Acts 2021, ch. 71. § 3. March 29, 2021.
Acts 2021, ch. 72. § 3. March 29, 2021.
Acts 2021, ch. 73. § 3. March 29, 2021.
Acts 2021, ch. 74. § 3. March 29, 2021.
Acts 2021, ch. 75. § 3. March 29, 2021.
Acts 2021, ch. 81. § 3. March 31, 2021.
Acts 2021, ch. 82. § 4. March 31, 2021.
Acts 2021, ch. 109, § 3. April 13, 2021.
Acts 2021, ch. 110, § 3. April 13, 2021.
Acts 2021, ch. 111, § 4. April 13, 2021.
Acts 2021, ch. 159, § 4. April 20, 2021.
Acts 2021, ch. 224 § 3. April 22, 2021.
Acts 2021, ch. 239, § 3. April 28, 2021.
Acts 2021, ch. 288, § 1. April 30, 2021.
Acts 2021, ch. 312, § 3. May 4, 2021.
Acts 2021, ch. 313, § 3. May 4, 2021.
Acts 2021, ch. 314, § 3. May 4, 2021.
Acts 2021, ch. 315, § 3. May 4, 2021.
Acts 2021, ch. 316, § 3. May 4, 2021.
Acts 2021, ch. 317, § 3. May 4, 2021.
Acts 2021, ch. 318, § 4. May 4, 2021.
Acts 2021, ch. 349, § 4. June 30, 2021.
Acts 2021, ch. 557, § 15. October 1, 2021.
Acts 2021, ch. 565, § 15. May 26, 2021.

4-29-243. Governmental entities terminated on June 30, 2022.

(a) The following governmental entities shall terminate on June 30, 2022:

(1) Advisory board for rehabilitation centers, created by § 49-11-704;

(2) Applied behavior analyst licensing committee of the board of examiners in psychology, created by § 63-11-303;

(3) Archaeological advisory council, created by § 11-6-103;

(4) Board of athletic trainers, created by § 63-24-102;

(5) Board of dietitian/nutritionist examiners, created by § 63-25-106;

(6) Board of examiners for nursing home administrators, created by § 63-16-102;

(7) Board of parole, created by § 40-28-103;

(8) Board of respiratory care, created by § 63-27-103;

(9) Bureau of TennCare within the department of finance and administration, pursuant to Executive Order No. 23 on October 19, 1999;

(10) Consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118;

(11) Council for licensing hearing instrument specialists, created by § 63-17-202;

(12) Council of certified professional midwifery, created by § 63-29-103;

(13) Council on children's mental health care, created by § 37-3-111;

(14) Department of agriculture, created by §§ 4-3-101 and 4-3-201;

(15) Department of education, created by §§ 4-3-101 and 4-3-801;

(16) Department of human services, created by §§ 4-3-101 and 4-3-1201;

(17) Department of revenue, created by §§ 4-3-101 and 4-3-1901;

(18) Department of tourist development, created by §§ 4-3-101 and 4-3-2201;

(19) Department of veterans services, created by §§ 4-3-101 and 4-3-2501;

(20) Domestic violence state coordinating council, created by § 38-12-101;

(21) Great Smoky Mountains Park commission, created by § 11-19-101;

(22) Housing development agency, board of directors, created by § 13-23-104;

(23) Interstate Compact on Mental Health, created by § 33-9-201;

(24) Interstate Compact on the Placement of Children, created by § 37-4-201;

(25) Interstate Insurance Product Regulation Compact of 2007, created by § 56-58-101;

(26) Local government planning advisory committee, created by § 4-3-727;

(27) Memphis regional megasite authority, created pursuant to § 64-6-101;

(28) Pest control advisory board, created by § 62-21-104;

(29) Polysomnography professional standards committee, created by § 63-31-103;

(30) School bond authority, created by § 49-3-1204;

(31) Southeast Interstate Low-Level Radioactive Waste Compact, created by § 68-202-701;

(32) State board of cosmetology and barber examiners, created by §§ 62-3-101 and 62-4-103;

(33) State family support council, created by § 33-5-208;

(34) State university and community college system, board of regents, created by § 49-8-201;

(35) Statewide planning and policy council for the department of intellectual and developmental disabilities, created by § 33-5-601;

(36) Tellico Reservoir development agency, created by § 64-1-701;

(37) Tennessee advisory committee for acupuncture, created by § 63-6-1003;

(38) Tennessee arts commission, created by § 4-20-101;

(39) Tennessee center for earthquake research and information, created by § 49-8-602;

(40) Tennessee emergency medical services board, created by § 68-140-303;

(41) Tennessee equine health advisory commission, created by § 43-13-103;

(42) Tennessee film, entertainment and music commission, created by § 4-3-5003;

(43) Tennessee fish and wildlife commission, created by § 70-1-201;

(44) Tennessee higher education commission, created by § 49-7-201;

(45) Tennessee life and health insurance guaranty association, created by § 56-12-205;

(46) Tennessee massage licensure board, created by § 63-18-103;

(47) Tennessee medical laboratory board, created by § 68-29-109;

(48) Tennessee rare disease advisory council, created by § 71-7-101;

(49) Tennessee rehabilitative initiative in correction board, created by § 41-22-404;

(50) Tennessee residence commission, created by § 4-23-202;

(51) Tennessee soil and water conservation commission, created by § 43-14-203;

(52) Tennessee sports hall of fame, created by § 4-3-5403;

(53) Tennessee student assistance corporation, board of directors, created by § 49-4-202;

(54) Water and wastewater operators, board of certification, created by § 68-221-905; and

(55) West Fork Drakes Creek dam and reservoir interstate authority, created by § 64-1-901.

(b) Each department, commission, board, agency or council of state government created during calendar year 2020 terminates on June 30, 2022.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2014, ch. 495, § 2; 2016, ch. 535, § 2; 2016, ch. 536, § 2; 2016, ch. 538, § 2; 2016, ch. 541, § 2; 2016, ch. 543, § 2; 2016, ch. 547, § 2; 2016, ch. 551, § 2; 2016, ch. 552, § 2; 2016, ch. 553, § 2; 2016, ch. 554, § 2; 2016, ch. 555, § 2; 2016, ch. 559, § 2; 2016, ch. 565, § 2; 2016, ch. 566, § 2; 2016, ch. 568, § 2; 2016, ch. 609, § 2; 2016, ch. 611, § 2; 2016, ch. 612, § 2; 2016, ch. 613, § 2; 2016, ch. 615, § 2; 2016, ch. 616, § 2; 2016, ch. 772, § 2; 2016, ch. 775, § 2; 2017, ch. 57, § 2; 2017, ch. 67, § 2; 2017, ch. 69, § 2; 2017, ch. 74, § 2; 2017, ch. 76, § 2; 2018, ch. 494, § 2; 2018, ch. 505, § 2; 2018, ch. 507, § 2; 2018, ch. 508, § 2; 2018, ch. 564, § 2; 2018, ch. 565, § 2; 2018, ch. 566, § 2; 2018, ch. 567, § 2; 2018, ch. 701, § 2; 2018, ch. 703, § 2; 2018, ch. 705, § 2; 2018, ch. 706, § 2; 2018, ch. 802, § 2; 2018, ch. 831, § 2; 2018, ch. 832, § 2; 2018, ch. 927, § 2; 2019, ch. 336, § 2; 2019, ch. 493, § 2; 2020, ch. 616, § 2; 2020, ch. 617, § 2; 2020, ch. 640, § 14; 2020, ch. 645, § 2; 2020, ch. 666, § 2; 2020, ch. 808, § 1; 2021, ch. 203, § 4; 2021, ch. 325, § 2; 2021, ch. 349, § 2.

Amendments.

The 2021 amendment by ch. 203 substituted "Tennessee soil and water conservation commission" for "State soil conservation committee" in (a).

The 2021 amendment by ch. 325 added "Polysomnography professional standards committee, created by § 63-31-103; which was transferred by Acts 2021, ch. 325, § 2, effective May 4, 2021.

The 2021 amendment by ch. 349 added concerning "Consumer advocate division in the office of the attorney general and reporter, created by § 65-4-118;" which was transferred by Acts 2021, ch. 349, § 2, effective June 30, 2021.

Effective Dates.

Acts 2021, ch. 203, § 35. April 22, 2021.
Acts 2021, ch. 325, § 3. May 4, 2021.
Acts 2021, ch. 349, § 4. June 30, 2021.

4-29-244. Governmental entities terminated on June 30, 2023.

(a) The following governmental entities shall terminate on June 30, 2023:

(1) [Deleted by 2021 amendment; transferred to § 4-29-245, effective October 1, 2021.]

(2) Board for professional counselors, marital and family therapists, and clinical pastoral therapists, created by § 63-22-101;

(3) Board of appeals for the department of human resources, created by § 8-30-108;

(4) Board of boiler rules, created by § 68-122-101;

(5) Board of medical examiners, created by § 63-6-101;

(6) Board of nursing, created by § 63-7-201;

(7) Board of pharmacy, created by § 63-10-301;

(8) Board of trustees of the college savings trust fund program, created by § 49-7-804;

(9) Controlled substance database advisory committee, created by § 53-10-303;

(10) Department of children's services, created by §§ 4-3-101 and 37-5-101;

(11) Department of commerce and insurance, created by §§ 4-3-101 and 4-3-1301;

(12) Department of environment and conservation, created by §§ 4-3-101 and 4-3-501;

(13) Department of health, created by §§ 4-3-101 and 4-3-1801;

(14) Department of human resources, created by §§ 4-3-101 and 4-3-1701;

(15) Department of intellectual and developmental disabilities, created by §§ 4-3-101 and 4-3-2701;

(16) Department of safety, created by §§ 4-3-101 and 4-3-2001;

(17) Doe Mountain recreation authority, created by § 11-25-103;

(18) Elevator and amusement device safety board, created by § 68-121-102;

(19) Employee suggestion award board, created by § 4-27-102;

(20) Energy efficient schools council, created by § 49-17-103;

(21) Medical cannabis commission, created by § 68-7-102;

(22) Prevailing wage commission, created by § 12-4-404;

(23) **[Effective July 1, 2022]** *Professional art therapist advisory committee of the board of examiners in psychology, created by § 63-11-401;*

(24) Psychology Interjurisdictional Compact Act, created by § 63-11-501;

(25) Sam Davis memorial association, board of trustees, created by § 4-13-301;

(26) Selection panel for TennCare reviewers, created by § 56-32-126;

(27) State textbook and instructional materials quality commission, created by § 49-6-2201;

(28) State unemployment compensation advisory council, created by § 50-7-606;

(29) Statewide community services agency, created by § 37-5-305;

(30) [Deleted by 2019 amendment; transferred to § 4-29-241.]

(31) Tennessee board of water quality, oil, and gas, created by § 69-3-104;

(32) Tennessee consolidated retirement system, board of trustees, created by § 8-34-301;

(33) Tennessee corn promotion board, created by § 43-29-122;

(34) Tennessee heritage conservation trust fund board of trustees, created by § 11-7-104;

(35) Tennessee interagency cash flow committee, created by § 9-4-610;

(36) Tennessee opioid abatement council, created by § 33-11-103;

(37) Tennessee public charter school commission, as created by § 49-13-105;

(38) Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201;

(39) Tennessee state veterans' homes board, created by § 58-7-102;

(40) Underground storage tanks and solid waste disposal control board, created by § 68-211-111; and

(41) Underground utility damage enforcement board, created by § 65-31-114.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2021 terminates on June 30, 2023.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2016, ch. 558, § 2; 2017, ch. 324, § 2; 2018, ch. 504, § 2; 2018, ch. 521, § 2; 2018, ch. 522, § 2; 2018, ch. 531, § 2; 2018, ch. 704, § 2; 2018, ch. 839, § 4; 2018, ch. 955, § 1; 2019, ch. 46, § 2; 2019, ch. 47, § 2; 2019, ch. 50, § 2; 2019, ch. 54, § 2; 2019, ch. 56, § 2; 2019, ch. 73, § 1; 2019, ch. 113, § 2; 2019, ch. 115, § 2; 2019,

ch. 285, § 2; 2019, ch. 286, § 2; 2019, ch. 287, § 2; 2019, ch. 288, § 2; 2019, ch. 289, § 2; 2019, ch. 290, § 2; 2019, ch. 291, § 2; 2019, ch. 293, § 2; 2019, ch. 333, § 2; 2019, ch. 368, § 2; 2020, ch. 538, § 2; 2020, ch. 541, § 2; 2020, ch. 612, § 2; 2020, ch. 613, § 2; 2020, ch. 634, § 2; 2021, ch. 49, § 2; 2021, ch. 75, § 2; 2021, ch. 145, § 1; 2021, ch. 159, § 2; 2021, ch. 160, § 1; 2021, ch. 224, § 2; 2021, ch. 288, § 2; 2021, ch. 318, § 2; 2021, ch. 352, § 2; 2021, ch. 491, § 20; 2021, ch. 557, § 3; 2021, ch. 577, § 2.

Amendments.

The 2021 amendment by ch. 49 added "Tennessee public charter school commission, as created by § 49-13-105;" which was transferred from § 4-29-242 by Acts 2021, ch. 49, § 2, effective March 29, 2021.

The 2021 amendment by ch. 75 added "Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred from § 4-29-242 by Acts 2021, ch. 75, § 2, effective March 29, 2021.

The 2021 amendment by ch. 145 added "Tennessee corn promotion board, created by § 43-29-122;" which was transferred from § 4-29-242 by Acts 2021, ch. 145, § 1, effective April 13, 2021.

The 2021 amendment by ch. 159 added "State textbook and instructional materials quality commission, created by § 49-6-2201;" which was transferred from § 4-29-242 by Acts 2021, ch. 159, § 2, effective April 20, 2021.

The 2021 amendment by ch. 160 added "Professional art therapist advisory committee of the board of examiners in psychology, created by § 63-11-401;" in (a).

The 2021 amendment by ch. 224 added "Statewide community services agency, created by § 37-5-305;" which was transferred from § 4-29-242 by Acts 2021, ch. 224, § 2, effective April 22, 2021.

The 2021 amendment by ch. 288 added "Board of nursing, created by § 63-7-201;" which was transferred from § 4-29-242 by Acts 2021, ch. 288, § 2, effective April 30, 2021.

The 2021 amendment by ch. 318 added "Department of children's services, created by §§ 4-3-101 and 37-5-101;" in (a) which was transferred by Acts 2021, ch. 318, § 2, effective May 4, 2021.

The 2021 amendment by ch. 352 added "Psychology Interjurisdictional Compact Act, created by § 63-11-501;" in (a).

The 2021 amendment by ch. 491 added "Tennessee opioid abatement council, created by § 33-11-103" in (a).

The 2021 amendment by ch. 557 deleted the former provisions in former (a) concerning "Board for licensing healthcare facilities, created by § 68-11-203;", which was transferred to § 4-29-245 by Acts 2021, ch. 557, § 3, effective October 1, 2021.

The 2021 amendment by ch. 577 added "Medical cannabis commission, created by § 68-7-102;" effective May 27, 2021.

Effective Dates.

Acts 2021, ch. 49, § 3. March 29, 2021.
Acts 2021, ch. 75, § 3. March 29, 2021.
Acts 2021, ch. 145, § 2. April 13, 2021.
Acts 2021, ch. 159, § 4. April 20, 2021.
Acts 2021, ch. 160, § 3. July 1, 2022; provided that for purposes of appointing the members of the advisory committee, the act took effect on April 20, 2021.
Acts 2021, ch. 224, § 3. April 22, 2021.
Acts 2021, ch. 288, § 3. April 30, 2021.
Acts 2021, ch. 318, § 4. May 4, 2021.
Acts 2021, ch. 352, § 4. May 11, 2021.
Acts 2021, ch. 491, § 23. May 24, 2021.
Acts 2021, ch. 557, § 15. October 1, 2021.
Acts 2021, ch. 577, § 4. May 27, 2021.

4-29-245. Governmental entities terminated on June 30, 2024.

(a) The following governmental entities shall terminate on June 30, 2024:

(1) Advisory council on state procurement, created by § 4-56-106;

(2) **[Effective October 1, 2021.]** *Board for licensing health care facilities, created by § 68-11-203;*

(3) Board of funeral directors and embalmers, created by § 62-5-201;

(4) Board of physician assistants, created by § 63-19-103;

(5) Bureau of workers' compensation, created by § 4-3-1408;

(6) Child care agency licensing board of review, created by § 71-3-510;

(7) Collection service board, created by § 62-20-104;

(8) Commission for uniform legislation, created by § 4-9-101;

(9) Commission on children and youth, created by § 37-3-102;

(10) Compact for Education, created by § 49-12-201;

(11) Department of correction, created by §§ 4-3-101 and 4-3-601;

(12) Department of finance and administration, created by §§ 4-3-101 and 4-3-1001;

(13) Department of general services, created by §§ 4-3-101 and 4-3-1101;

(14) Department of labor and workforce development, created by §§ 4-3-101 and 4-3-1403;

(15) Department of transportation, created by §§ 4-3-101 and 4-3-2301;

(16) **[Effective October 1, 2021.]** *Health services and development agency, created by § 68-11-1604;*

(17) Interstate Mining Compact, created by § 59-10-101;

(18) Medical advisory committee, created by § 50-6-135;

(19) Medical payment committee, created by § 50-6-125;

(20) [Deleted by 2021 amendment.]

(21) Public records commission, created by § 10-7-302;

(22) Real estate appraiser commission, created by § 62-39-201;

(23) Real estate commission, created by § 62-13-201;

(24) Regional transportation authority of Middle Tennessee, created by § 64-8-101;

(25) **[Effective January 1, 2022.]** *Sports wagering advisory council, created by § 4-49-305;*

(26) Standards committee, department of children's services, created by § 37-5-516;

(27) State board of education, created by § 49-1-301;

(28) State election commission, created by § 2-11-101;

(29) State energy policy council, created by § 68-204-101;

(30) State funding board, created by § 9-9-101;

(31) State procurement commission, created by § 4-56-102;

(32) State protest committee, created by § 4-56-103;

(33) Tennessee auctioneer commission, created by § 62-19-104;

(34) Tennessee board of court reporting, created by § 20-9-604;

(35) Tennessee central economic authority, created by § 64-5-101;

(36) Tennessee corrections institute, board of control, created by § 41-7-105;

(37) Tennessee-Tombigbee waterway development authority, created by § 69-8-101;

(38) Trial court vacancy commission, created by § 17-4-301; and

(39) University of Tennessee, board of trustees, created by § 49-9-202.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2022 terminates on June 30, 2024.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2016, ch. 557, § 2; 2016, ch. 562, § 2; 2016, ch. 563, § 2; 2016, ch. 567, § 2; 2018, ch. 500, § 2; 2018, ch. 502, § 2; 2018, ch. 503, § 2; 2018, ch. 511, § 2; 2018, ch. 513, § 2; 2018, ch. 514, § 2; 2018, ch. 516, § 2; 2018, ch. 519, § 2; 2018, ch. 520, § 2; 2018, ch. 532, § 2; 2018, ch. 533, § 2; 2018, ch. 534, § 2; 2018, ch. 563, § 2; 2019, ch. 33, § 2; 2019, ch. 51, § 2; 2019, ch. 166, § 2; 2019, ch. 292, § 2; 2020, ch. 543, § 2; 2020, ch. 553, § 2; 2020, ch. 559, § 2; 2020, ch. 562, § 2; 2020, ch. 564, § 2; 2020, ch. 633, § 2; 2020, ch. 639, § 2; 2020, ch. 656, § 2; 2020, ch. 657, § 2; 2020, ch. 671, § 2; 2020, ch. 672, § 2; 2020, ch. 678, § 2; 2020, ch. 695, § 2; 2021, ch. 81, § 2; 2021, ch. 294, § 11; 2021, ch. 557, § 4; 2021, ch. 565, § 2; 2021, ch. 593, § 29.

Compiler's Notes.

The state procurement commission, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Amendments.

The 2021 amendment by ch. 81 added "Regional transportation authority of Middle Tennessee, created by § 64-8-101;" which was transferred from § 4-29-242 by Acts 2021, ch. 81, § 1, effective March 31, 2021.

The 2021 amendment by ch. 294 deleted the former provisions in (a) concerning "Private investigation and polygraph commission, created by § 62-26- 301;".

The 2021 amendment by ch. 557 added "Board for licensing health care facilities, created by § 68-11-203;" which was transferred from § 4-29-244 by Acts 2021, ch. 557, § 2, effective October 1, 2021; and added "Health services and development agency, created by§ 68-11-1604;" which was transferred from § 4-29-242 by Acts 2021, ch. 557, § 2, effective October 1, 2021.

The 2021 amendment by ch. 565 added "Board of physician assistants, created by § 63-19-103;" effective May 26, 2021.

The 2021 amendment by ch. 593 added "The sports wagering advisory council, created by § 4-49-305"; effective January 1, 2022.

Effective Dates.

Acts 2021, ch. 81, § 3. March 31, 2021.

Acts 2021, ch. 294, § 37. April 30, 2021.

Acts 2021, ch. 557, § 15. October 1, 2021.

Acts 2021, ch. 565, § 15. May 26, 2021.

Acts 2021, ch. 593, § 33. January 1, 2022; provided that for purposes of promulgating rules and carrying out administrative duties, the act took effect on May 27, 2021.

4-29-246. Governmental entities terminated on June 30, 2025.

(a) The following governmental entities shall terminate on June 30, 2025:

(1) Advisory committee for children's special services, created by § 68-12-106;

(2) Advisory council on workers' compensation, created by § 50-6-121;

(3) Air pollution control board, created by § 68-201-104;

(4) Board of alcohol and drug abuse counselors, created by § 68-24-601;

(5) Board of claims, created by § 9-8-101;

(6) Board of ground water management, created by § 69-10-107;

(7) Board of occupational therapy, created by § 63-13-216;

(8) Board of osteopathic examination, created by § 63-9-101;

(9) Board of physical therapy, created by § 63-13-318;

(10) Chickasaw basin authority, created by § 64-1-201;

(11) Civil Defense and Disaster Compact, created by § 58-2-402;

(12) Commission on firefighting personnel standards and education, created by § 4-24-101;

(13) Council on pensions, created by § 3-9-101;

(14) Department of economic and community development, created by §§ 4-3-101 and 4-3-701;

(15) Department of financial institutions, created by §§ 4-3-101 and 4-3-401;

(16) Department of mental health and substance abuse services, created by §§ 4-3-101 and 4-3-1601;

(17) Douglas Henry state museum commission, created by § 4-20-301;

(18) Emergency communications board, created by § 7-86-302;

(19) Emergency Management Assistance Compact, created by § 58-2-403;

(20) Genetic advisory committee, created by § 68-5-503;

(21) Human rights commission, created by § 4-21-201;

(22) Industrial development division, building finance committee, created by § 4-14-108;

(23) Information systems council, created by § 4-3-5501;

(24) Interstate Compact on Detainers, created by § 40-31-101;

(25) Interstate Corrections Compact, created by § 41-23-102;

(26) Interstate Earthquake Compact of 1988, created by § 58-2-701;

(27) Perinatal advisory committee, created by § 68-1-803;

(28) Private probation services council, created by § 16-3-901;

(29) Second look commission, created by § 37-3-803;

(30) Standards committee, department of human services, created by § 71-3-511;

(31) Statewide planning and policy council for the department of mental health and substance abuse services, created by § 33-1-401;

(32) Tennessee athletic commission, created by § 68-115-103;

(33) Tennessee board of judicial conduct, created by § 17-5-201;

(34) Tennessee bureau of investigation, created by § 38-6-101;

(35) Tennessee claims commission, created by § 9-8-301;

(36) Tennessee code commission, created by § 1-1-101;

(37) Tennessee community resource board, created by § 41-10-105.

(38) Tennessee emergency management agency, created by §§ 58-2-103 and 58-2-104;

(39) Tennessee historical commission, created by § 4-11-102;

(40) Tennessee medical examiner advisory council, created by § 38-7-201;

(41) Tennessee peace officers standards and training commission, created by § 38-8-102;

(42) Tennessee public television council, created by § 49-50-905;

(43) Tennessee radiologic imaging and radiation therapy board of examiners, created by § 63-6-901;

(44) Tennessee Technological University, board of trustees, created by §§ 49-8-101 and 49-8-201;

(45) Tennessee technology development corporation, created by § 4-14-201;

(46) Tennessee wars commission, created by § 4-11-301;

(47) Tennessee wine and grape board, created by § 57-3-1101;

(48) Traumatic brain injury advisory council, created by § 68-55-102; and

(49) Wastewater financing board, created by § 68-221-1008.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2023 terminates on June 30, 2025.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2017, ch. 48, § 2; 2017, ch. 54, § 2; 2017, ch. 55, § 2; 2017, ch. 71, § 2; 2017, ch. 72, § 2; 2019, ch. 14, § 2; 2019, ch. 15, § 2; 2019, ch. 16, § 2; 2019, ch. 17, § 2; 2019, ch. 18, § 2; 2019, ch. 19, § 2; 2019, ch. 22, § 2; 2019, ch. 23, § 2; 2019, ch. 24, § 2; 2019, ch. 25, § 2; 2019, ch. 26, § 2; 2019, ch. 27, § 2; 2019, ch. 28, § 2; 2019, ch. 29, § 2; 2019, ch. 34, § 2; 2019, ch. 43, § 2; 2019, ch. 48, § 2; 2019, ch. 52, § 2; 2019, ch. 53, § 2; 2019, ch. 55, § 2; 2019, ch. 114, § 2; 2019, ch. 212, § 2; 2020, ch. 542, § 2; 2020, ch. 545, § 2; 2020, ch. 547, § 2; 2020, ch. 566, § 2; 2020, ch. 614, § 2; 2020, ch. 663, § 2; 2020, ch. 702, § 2; 2021, ch. 12, § 2; 2021, ch. 21, § 2; 2021, ch. 29, § 2; 2021, ch. 32, § 2; 2021, ch. 41, § 2; 2021, ch. 42, § 2; 2021, ch. 43, § 2; 2021, ch. 44, § 2; 2021, ch. 52, § 2; 2021, ch. 53, § 2; 2021, ch. 73, § 2; 2021, ch. 109, § 2; 2021, ch. 111, § 2; 2021, ch. 209, § 2; 2021, ch. 303, § 4; 2021, ch. 316, § 2.

Amendments.

The 2021 amendment by ch. 12 added "Department of mental health and substance abuse services, created by §§ 4-3-101 and 4-3-1601;" which was transferred by Acts 2021, ch. 12, § 2, effective March 23, 2021.

The 2021 amendment by ch. 21 added "Private probation services council, created by § 16-3-901;" which was transferred by Acts 2021, ch. 21, § 2, effective March 23, 2021.

The 2021 amendment by ch. 29 added "Statewide planning and policy council for the depart-

ment of mental health and substance abuse services, created by § 33-1-401;" which was transferred by Acts 2021, ch. 29, § 2, effective March 23, 2021.

The 2021 amendment by ch. 32 added "Tennessee athletic commission, created by § 68-115-103;" which was transferred by Acts 2021, ch. 32, § 2, effective March 23, 2021.

The 2021 amendment by ch. 41 added "Advisory council on workers' compensation, created by § 50-6-121;" which was transferred by Acts 2021, ch. 41, § 2, effective March 29, 2021.

The 2021 amendment by ch. 42 added "Department of economic and community development, created by §§ 4-3-101 and 4-3-701;" which was transferred by Acts 2021, ch. 42, § 2, effective March 29, 2021.

The 2021 amendment by ch. 43 added "Department of financial institutions, created by §§ 4-3-101 and 4-3-401;" which was transferred by Acts 2021, ch. 43, § 2, effective March 29, 2021.

The 2021 amendment by ch. 44 added "Tennessee bureau of investigation, created by § 38-6-101;" which was transferred by Acts 2021, ch. 44, § 2, effective March 29, 2021.

The 2021 amendment by ch. 52 added "Tennessee technology development corporation, created by § 4-14-301;" which was transferred by Acts 2021, ch. 52, § 2, effective March 29, 2021.

The 2021 amendment by ch. 53 added "Tennessee wine and grape board, created by § 57-3-1101;" which was transferred by Acts 2021, ch. 53, § 2, effective March 29, 2021.

The 2021 amendment by ch. 73 added "Emergency communications board, created by § 7-86-302;" which was transferred by Acts 2021, ch. 73, § 2, effective March 29, 2021.

The 2021 amendment by ch. 109 added "Second look commission, created by § 37-3-803;" which was transferred by Acts 2021, ch. 109, § 2, effective April 13, 2021.

The 2021 amendment by ch. 111 added "Tennessee board of judicial conduct, created by § 17-5-201;" which was transferred by Acts 2021, ch. 111, § 2, effective April 13, 2021.

The 2021 amendment by ch. 209 added "Tennessee radiologic imaging and radiation therapy board of examiners, created by § 63-6-901;" which was transferred by Acts 2021, ch. 209, § 2, effective April 22, 2021.

The 2021 amendment by ch. 303 deleted "and insurance" following "pensions" in (a)(12).

The 2021 amendment by ch. 316 added "Tennessee Technological University, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred by Acts 2021, ch. 316, § 2, effective May 4, 2021.

Effective Dates.

Acts 2021, ch. 12. § 3, March 23, 2021.
Acts 2021, ch. 21. § 3, March 23, 2021.
Acts 2021, ch. 29. § 3, March 23, 2021.
Acts 2021, ch. 32. § 3, March 23, 2021.
Acts 2021, ch. 41. § 3, March 29, 2021.
Acts 2021, ch. 42. § 3, March 29, 2021.
Acts 2021, ch. 43. § 3, March 29, 2021.
Acts 2021, ch. 44. § 3, March 29, 2021.
Acts 2021, ch. 52. § 3, March 29, 2021.
Acts 2021, ch. 53. § 3, March 29, 2021.
Acts 2021, ch. 73. § 3, March 29, 2021.
Acts 2021, ch. 109, § 3. April 13, 2021.
Acts 2021, ch. 111, § 4. April 13, 2021.
Acts 2021, ch. 209, § 3. April 22, 2021.
Acts 2021, ch. 303, § 13. July 1, 2021.
Acts 2021, ch. 316, § 3. May 4, 2021.

4-29-247. Governmental entities terminated on June 30, 2026.

(a) The following governmental entities shall terminate on June 30, 2026:

(1) Board of chiropractic examiners, created by § 63-4-102;

(2) Board of communication disorders and sciences, created by § 63-17-104;

(3) Board of dentistry, created by § 63-5-101;

(4) Board of dispensing opticians, created by § 63-14-101;

(5) Board of examiners for architects and engineers, created by § 62-2-201;

(6) Board of examiners in psychology, created by § 63-11-101;

(7) Board of optometry, created by § 63-8-103;

(8) Board of podiatric medical examiners, created by § 63-3-103;

(9) Board of social work licensure, created by § 63-23-101;

(10) Board of veterinary medical examiners, created by § 63-12-104;

(11) Collateral pool board, created by § 9-4-506;

(12) Committee for clinical perfusionists, created by § 63-28-112;

(13) Committee for providing competitive integrated employment for individuals with severe disabilities, created by § 71-4-703;

(14) Delta human resource agency, created by § 13-26-102;

(15) East Tennessee human resource agency, created by § 13-26-102;

(16) First Tennessee human resource agency, created by § 13-26-102;

(17) Integrated criminal justice steering committee, created by § 16-3-815;

(18) Interstate Compact for Juveniles, created by § 37-4-101;

(19) Interstate Compact for Supervision of Adult Offenders, created by § 40-28-401;

(20) Local education insurance committee, created by § 8-27-301;

(21) Local government insurance committee, created by § 8-27-701;

(22) Mid-Cumberland human resource agency, created by § 13-26-102;

(23) Northwest Tennessee human resource agency, created by § 13-26-102;

(24) Office of business enterprise, created by § 4-26-101;

(25) Post-conviction defender oversight commission, created by § 40-30-203;

(26) Sequatchie Valley educational development agency, created by §§ 64-1-501 and 64-1-502;

(27) Sex offender treatment board, created by § 39-13-704;

(28) Southwest Tennessee human resource agency, created by § 13-26-102;

(29) State Alzheimer's disease and related dementia advisory council, created by § 71-2-117;

(30) State board for licensing contractors, created by § 62-6-104;

(31) State board of accountancy, created by § 62-1-104;

(32) State building commission, created by § 4-15-101;

(33) State capitol commission, created by § 4-8-301;

(34) State insurance committee, created by § 8-27-201;

(35) Tennessee commission on aging and disability, created by § 71-2-104;

(36) Tennessee council for career and technical education, created by § 49-11-201;

(37) Tennessee council on autism spectrum disorder, created by § 4-3-2711;

(38) Tennessee motor vehicle commission, created by § 55-17-103;

(39) Upper Cumberland human resource agency, created by § 13-26-102; and

(40) Utility management review board, created by § 7-82-701.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2024 terminates on June 30, 2026.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2018, ch. 501, § 2; 2018, ch. 509, § 2; 2018, ch. 510, § 2; 2018, ch. 515, § 2; 2018, ch. 517, § 2; 2020, ch. 539, § 2; 2020, ch. 546, § 2; 2020, ch. 549, § 2; 2020, ch. 550, § 2; 2020, ch. 556, § 2; 2020, ch. 557, § 2; 2020, ch. 558, § 2; 2020, ch. 560, § 2; 2020, ch. 563, § 2; 2020, ch. 567, § 2; 2020, ch. 569, § 2; 2020, ch. 611, § 2; 2020, ch. 615, § 2; 2020, ch. 638, § 2; 2020, ch. 664, § 2; 2020, ch. 768, § 2; 2021, ch. 3, § 2; 2021, ch. 4, § 2; 2021, ch. 5, § 2; 2021, ch. 6, § 2; 2021, ch. 7, § 2; 2021, ch. 8, § 2; 2021, ch. 9, § 2; 2021, ch. 10, § 2; 2021, ch. 11, § 2; 2021, ch. 13, § 2; 2021, ch. 15, § 2; 2021, ch. 17, § 2;

2021, ch. 18, § 2; 2021, ch. 25, § 2; 2021, ch. 26, § 2; 2021, ch. 45, § 2; 2021, ch. 46, § 2; 2021, ch. 54, § 2; 2021, ch. 71, § 2; 2021, ch. 72, § 2.

Compiler's Notes.

The board of medical examiners' committee on physician assistants, which was transferred to this section by Acts 2021, ch. 7, § 1, was subsequently repealed by Acts 2021, ch. 565, § 1.

Amendments.

The 2021 amendment by ch. 3 added "Board of chiropractic examiners, created by § 63-4-102;" which was transferred by Acts 2021, ch. 3, § 2, effective March 23, 2021.

The 2021 amendment by ch. 4 added "Board of communication disorders and sciences, created by § 63-17-104;" which was transferred by Acts 2021, ch. 4, § 2, effective March 23, 2021.

The 2021 amendment by ch. 5 added "Board of dentistry, created by § 63-5-101;" which was transferred by Acts 2021, ch. 5, § 2, effective March 23, 2021.

The 2021 amendment by ch. 6 added "Board of dispensing opticians, created by § 63-14-101;" which was transferred by Acts 2021, ch. 6, § 2, effective March 23, 2021.

The 2021 amendment by ch. 8 added "Board of optometry, created by § 63-8-103;" which was transferred by Acts 2021, ch. 8, § 2, effective March 23, 2021.

The 2021 amendment by ch. 9 added "Board of podiatric medical examiners, created by § 63-3-103;" which was transferred by Acts 2021, ch. 9, § 2, effective March 23, 2021.

The 2021 amendment by ch. 10 added "Board of veterinary medical examiners, created by § 63-12-104;" which was transferred by Acts 2021, ch. 10, § 2, effective March 23, 2021.

The 2021 amendment by ch. 11 added "Delta human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 11, § 2, effective March 23, 2021.

The 2021 amendment by ch. 13 added "East Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 13, § 2, effective March 23, 2021.

The 2021 amendment by ch. 15 added "First Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 15, § 2, effective March 23, 2021.

The 2021 amendment by ch. 17 added "Mid-Cumberland human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 17, § 2, effective March 23, 2021.

The 2021 amendment by ch. 18 added "Northwest Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 18, § 2, effective March 23, 2021.

The 2021 amendment by ch. 25 added "Southwest Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 25, § 2, effective March 23, 2021.

The 2021 amendment by ch. 26 added "State Alzheimer's disease and related dementia advisory council, created by § 71-2-117;" which was transferred by Acts 2021, ch. 26, § 2, effective March 23, 2021.

The 2021 amendment by ch. 45 added "Tennessee council for career and technical education, created by § 49-11-201;" which was transferred by Acts 2021, ch. 45, § 2, effective March 29, 2021.

The 2021 amendment by ch. 46 added "Tennessee council on autism spectrum disorder, created by § 4-3-2711;" which was transferred by Acts 2021, ch. 46, § 2, effective March 29, 2021.

The 2021 amendment by ch. 54 added "Upper Cumberland human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 54, § 2, effective March 29, 2021.

The 2021 amendment by ch. 71 added "Board of examiners in psychology, created by § 63-11-101;" which was transferred by Acts 2021, ch. 71, § 2, effective March 29, 2021.

The 2021 amendment by ch. 72 added "Committee for providing competitive integrated employment for individuals with severe disabilities, created by § 71-4-703;" which was transferred by Acts 2021, ch. 72, § 2, effective March 29, 2021.

Effective Dates.

Acts 2021, ch. 3. § 3. March 23, 2021.
Acts 2021, ch. 4. § 3. March 23, 2021.
Acts 2021, ch. 5. § 3. March 23, 2021.
Acts 2021, ch. 6. § 3. March 23, 2021.
Acts 2021, ch. 7. § 3. March 23, 2021.
Acts 2021, ch. 8. § 3. March 23, 2021.
Acts 2021, ch. 9. § 3. March 23, 2021.
Acts 2021, ch. 10. § 3. March 23, 2021.
Acts 2021, ch. 11. § 3. March 23, 2021.
Acts 2021, ch. 13. § 3. March 23, 2021.
Acts 2021, ch. 15. § 3. March 23, 2021.
Acts 2021, ch. 17. § 3. March 23, 2021.
Acts 2021, ch. 18. § 3. March 23, 2021.
Acts 2021, ch. 25. § 3. March 23, 2021.
Acts 2021, ch. 26. § 3. March 23, 2021.
Acts 2021, ch. 45. § 3. March 29, 2021.
Acts 2021, ch. 46. § 3. March 29, 2021.
Acts 2021, ch. 54. § 3. March 29, 2021.
Acts 2021, ch. 71. § 3. March 29, 2021.
Acts 2021, ch. 72. § 3. March 29, 2021.

4-29-248. Governmental entities terminated on June 30, 2027.

(a) The following governmental entities terminate on June 30, 2027:

(1) Advisory council for the education of students with disabilities, cre-

ated by § 49-10-105;

(2) Alcoholic beverage commission, created by § 57-1-102;

(3) Austin Peay State University, board of trustees, created by §§ 49-8-101 and 49-8-201;

(4) Bureau of ethics and campaign finance, created by § 4-55-101;

(5) Child care advisory council, created by § 49-1-302;

(6) Dyslexia advisory council, created by § 49-1-229;

(7) East Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201:

(8) James K. Polk memorial association, created by § 4-13-201;

(9) Middle Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201;

(10) Occupational safety and health review commission, created by § 50-3-801;

(11) South Central Tennessee human resource agency, created by § 13-26-102;

(12) Southeast Tennessee human resource agency, created by § 13-26-102;

(13) Southeastern Interstate Forest Fire Protection Compact, created by § 11-4-501;

(14) Southern Regional Education Compact, created by § 49-12-101;

(15) Southern states energy board, created by § 68-202-601;

(16) Southern States Nuclear Compact, created by § 68-202-601;

(17) State board of equalization, created by § 4-3-5101;

(18) State board of examiners for land surveyors, created by § 62-18-103;

(19) State forestry commission, created by § 11-4-201;

(20) State palliative care and quality of life council, created by § 71-2-116;

(21) State TennCare pharmacy advisory committee, created by § 71-5-2401;

(22) Tennessee aeronautics commission, created by § 42-2-301;

(23) Tennessee agricultural hall of fame board, created by § 43-1-601;

(24) Tennessee council for the deaf, deaf-blind, and hard of hearing, created by § 71-4-2102;

(25) Tennessee financial literacy commission, created by § 49-6-1702;

(26) Tennessee public utility commission, created by § 65-1-101; and

(27) University of Memphis, board of trustees, created by §§ 49-8-101 and 49-8-201.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2025 terminates on June 30, 2027.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2019, ch. 20, § 2; 2019, ch. 21, § 2; 2019, ch. 30, § 2; 2019, ch. 31, § 2; 2019, ch. 32, § 2; 2020, ch. 537, § 2; 2020, ch. 544, § 2; 2020, ch. 555, § 2; 2020, ch. 561, § 2; 2020, ch. 565, § 2; 2021, ch. 16, § 2; 2021, ch. 22, § 2; 2021, ch. 23, § 2; 2021, ch. 24, § 2; 2021, ch. 27, § 2; 2021, ch. 28, § 2; 2021, ch. 31, § 2; 2021, ch. 48, § 2; 2021, ch. 50, § 2; 2021, ch. 74, § 2; 2021, ch. 82, § 2; 2021, ch. 110, § 2; 2021, ch. 239, § 2; 2021, ch. 312, § 2; 2021, ch. 313, § 2; 2021, ch. 314, § 2; 2021, ch. 315, § 2; 2021, ch. 317, § 2.

Compiler's Notes.

The viticulture advisory board, which was transferred to this section by Acts 2019, ch. 21, § 2, was subsequently repealed by Acts 2019, ch. 444, § 3.

Amendments.

The 2021 amendment by ch. 16 added in (a) "James K. Polk memorial association, created by § 4-13-201;" which was transferred by Acts 2021, ch. 16, § 2, effective March 23, 2021.

The 2021 amendment by ch. 22 added in (a) "South Central Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 22, § 2, effective March 23, 2021.

The 2021 amendment by ch. 23 added in (a) "Southeast Tennessee human resource agency, created by § 13-26-102;" which was transferred by Acts 2021, ch. 23, § 2, effective March 23, 2021.

The 2021 amendment by ch. 24 added in (a) "Southeastern Interstate Forest Fire Protection Compact, created by § 11-4-501;" which was transferred by Acts 2021, ch. 24, § 2, effective March 23, 2021.

The 2021 amendment by ch. 27 added in (a) "State board of examiners for land surveyors, created by § 62-18-103;" which was transferred by Acts 2021, ch. 27, § 2, effective March 23, 2021.

The 2021 amendment by ch. 28 added in (a) "State forestry commission, created by § 11-4-201;" which was transferred by Acts 2021, ch. 28, § 2, effective March 23, 2021.

The 2021 amendment by ch. 31 added in (a) "Tennessee aeronautics commission, created by § 42-2-301;" which was transferred by Acts 2021, ch. 31, § 2, effective March 23, 2021.

The 2021 amendment by ch. 48 added in (a) "Tennessee financial literacy commission, created by § 49-6-1702;" which was transferred by Acts 2021, ch. 48, § 2, effective March 29, 2021.

The 2021 amendment by ch. 50 added in (a) "Tennessee public utility commission, created by § 65-1-101;" which was transferred by Acts 2021, ch. 50, § 2, effective March 29, 2021.

The 2021 amendment by ch. 74 added in (a) "Occupational safety and health review commission, created by § 50-3-801;" which was transferred by Acts 2021, ch. 74, § 2, effective March 29, 2021.

The 2021 amendment by ch. 82 added in (a) "Alcoholic beverage commission, created by § 57-1-102;" which was transferred by Acts 2021, ch. 82, § 2, effective March 31, 2021.

The 2021 amendment by ch. 110 added "State TennCare pharmacy advisory committee, created by § 71-5-2401;" which was transferred by Acts 2021, ch. 110, § 2, effective April 13, 2021.

The 2021 amendment by ch. 239 added "Bureau of ethics and campaign finance, created by § 4-55-101;" which was transferred by Acts 2021, ch. 239, § 2, effective April 28, 2021.

The 2021 amendment by ch. 312 added "Austin Peay State University, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred by Acts 2021, ch. 312, § 2, effective May 4, 2021.

The 2021 amendment by ch. 313 added "East Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred by Acts 2021, ch. 313, § 2, effective May 4, 2021.

The 2021 amendment by ch. 314 added "Middle Tennessee State University, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred by Acts 2021, ch. 314, § 2, effective May 4, 2021.

The 2021 amendment by ch. 315 added "State board of equalization, created by § 4-3-5101;" which was transferred by Acts 2021, ch. 315, § 2, effective May 4, 2021.

The 2021 amendment by ch. 317 added "University of Memphis, board of trustees, created by §§ 49-8-101 and 49-8-201;" which was transferred by Acts 2021, ch. 317, § 2, effective May 4, 2021.

Effective Dates.

Acts 2021, ch. 16, § 3. March 23, 2021.
Acts 2021, ch. 22, § 3. March 23, 2021.
Acts 2021, ch. 23, § 3. March 23, 2021.
Acts 2021, ch. 24, § 3. March 23, 2021.
Acts 2021, ch. 27, § 3. March 23, 2021.
Acts 2021, ch. 28, § 3. March 23, 2021.
Acts 2021, ch. 31, § 3. March 23, 2021.
Acts 2021, ch. 48, § 3. March 29, 2021.
Acts 2021, ch. 50, § 3. March 29, 2021.
Acts 2021, ch. 74, § 3. March 29, 2021.
Acts 2021, ch. 82, § 4. March 31, 2021.
Acts 2021, ch. 110, § 3. April 13, 2021.
Acts 2021, ch. 239, § 3. April 28, 2021.
Acts 2021, ch. 312, § 3. May 4, 2021.
Acts 2021, ch. 313, § 3. May 4, 2021.
Acts 2021, ch. 314, § 3. May 4, 2021.
Acts 2021, ch. 315, § 3. May 4, 2021.
Acts 2021, ch. 317, § 3. May 4, 2021.

4-29-249. Governmental entities terminated on June 30, 2028.

(a) The following governmental entities terminate on June 30, 2028:

(1) Beech River watershed development authority, board of directors, created by § 64-1-101;

(2) Board of law examiners, created by § 23-1-101;

(3) Carroll County watershed authority, created by § 64-1-801;

(4) Interstate Nurse Licensure Compact, created by § 63-7-401;

(5) Ocoee River recreation and economic development fund board, created by § 11-8-104;

(6) Physical therapy licensure compact, created by § 63-13-401;

(7) Rail service authorities, created by § 7-56-201;

(8) South Central Tennessee railroad authority, created by § 64-2-201;

(9) Tennessee Duck River development agency, created by §§ 64-1-601 and 64-1-602;

(10) Tri-county railroad authority, created by § 64-2-301; and

(11) West Tennessee River basin authority, created by § 64-1-1101.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2026 terminates on June 30, 2028.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2020, ch. 540, § 2; 2020, ch. 548, § 2; 2020, ch. 551, § 2; 2020, ch. 552, § 2; 2020, ch. 554, § 2; 2020, ch. 568, § 2; 2020, ch. 661, § 2; 2020, ch. 662, § 2; 2020, ch. 665, § 2; 2020, ch. 667, § 2; 2021, ch. 19, § 2.

Amendments.

The 2021 amendment by ch. 19 added "Ocoee River recreation and economic development fund board, created by § 11-8-104;" which was transferred by Acts 2021, ch. 19, § 2, effective March 23, 2021.

Effective Dates.

Acts 2021, ch. 19, § 3. March 23, 2021.

4-29-250. Governmental entities terminated on June 30, 2029.

(a) The following governmental entities terminate on June 30, 2029:

(1) Beef promotion board, created by § 43-29-118;

(2) Pork promotion board, created by § 43-29-119;

(3) Tennessee advisory commission on intergovernmental relations, created by § 4-10-102;

(4) Tennessee dairy promotion committee, created by § 44-19-114; and

(5) Tennessee soybean promotion board, created by § 43-20-102.

(b) Each department, commission, board, agency, or council of state government created during calendar year 2027 terminates on June 30, 2029.

(c) Any governmental entity that has been terminated under this section may be continued, reestablished, or restructured in accordance with this chapter.

History.

Acts 2021, ch. 2, § 2; 2021, ch. 20, § 2; 2021, ch. 30, § 2; 2021, ch. 47, § 2; 2021, ch. 51, § 2.

Amendments.

The 2021 amendment by ch. 20 added "Pork promotion board, created by § 43-29-119;" which was transferred by Acts 2021, ch. 20, § 2, effective March 23, 2021.

The 2021 amendment by ch. 30 added "Tennessee advisory commission on intergovernmental relations, created by § 4-10-102;" which was transferred by Acts 2021, ch. 30, § 2, effective March 23, 2021.

The 2021 amendment by ch. 47 added "Tennessee dairy promotion committee, created by § 44-19-114;" which was transferred by Acts 2021, ch. 47, § 2, effective March 29, 2021.

The 2021 amendment by ch. 51 added "Tennessee soybean promotion board, created by § 43-20-102;" which was transferred by Acts 2021, ch. 51, § 2, effective March 29, 2021.

Effective Dates.

Acts 2021, ch. 2, § 3. March 23, 2021.
Acts 2021, ch. 20, § 3. March 23, 2021.
Acts 2021, ch. 30, § 3. March 23, 2021.
Acts 2021, ch. 47, § 3. March 29, 2021.

Acts 2021, ch. 51, § 3. March 29, 2021.

CHAPTER 30

LOCAL GOVERNMENT ELECTRONIC TECHNOLOGY ACT OF 2009

Section
4-30-101. Purpose — Short title.
4-30-102. Chapter definitions.
4-30-103. Use of current electronic technology — Filing of plan before implementing new electronic technology — Contents of plan.

4-30-101. Purpose — Short title.

In order to encourage local governments in Tennessee to utilize current electronic technology to perform the business functions of their offices, to ensure the best possible stewardship of public funds and to maintain adequate internal controls, there is created the "Local Government Electronic Technology Act of 2009."

History.
Acts 2009, ch. 96, § 1.

Compiler's Notes.
Former chapter 30, §§ 4-30-101 — 4-30-107 (Acts 1977, ch. 475, §§ 1-4; T.C.A., §§ 4-3001 — 4-3007), concerning the governmental study and reorganization commission, became obsolete on January 15, 1981, pursuant to the terms of former § 4-30-106, which provided for the termination of the commission on that date.

4-30-102. Chapter definitions.

As used in this chapter, "local government" means any county, metropolitan government, municipality or other political subdivision of this state.

History.
Acts 2009, ch. 96, § 1.

Compiler's Notes.
Former chapter 30, §§ 4-30-101 — 4-30-107 (Acts 1977, ch. 475, §§ 1-4; T.C.A., §§ 4-3001 — 4-3007), concerning the governmental study and reorganization commission, became obsolete on January 15, 1981, pursuant to the terms of former § 4-30-106, which provided for the termination of the commission on that date.

4-30-103. Use of current electronic technology — Filing of plan before implementing new electronic technology — Contents of plan.

(a) Local governments are encouraged to use current electronic technology to perform the business functions of their offices.

(b) Prior to any local government implementing new electronic technology associated with the disbursement of public funds, purchasing or the sale of local government assets or the collection of various taxes, fines, fees or payments, the local government shall file a plan with the comptroller of the treasury for comments. The plan shall be filed at least thirty (30) days prior to implementation.

(c) The plan shall contain the following information:

(1) A description of the business process and the technology to be utilized;

(2) A description of the policies and procedures related to the implementation of the electronic technology;

(3) Documentation of internal controls that will ensure the integrity of the business process; and

(4) The estimated implementation cost and a statement as to whether the implementation of the new electronic technology will be implemented within the existing operating resources of the office or indicate prior approval of the governing body if additional operating resources are needed.

History.
Acts 2009, ch. 96, § 1.

Compiler's Notes.
Former chapter 30, §§ 4-30-101 — 4-30-107 (Acts 1977, ch. 475, §§ 1-4; T.C.A., §§ 4-3001 — 4-3007), concerning the governmental study and reorganization commission, became obsolete on January 15, 1981, pursuant to the terms of former § 4-30-106, which provided for the termination of the commission on that date.

CHAPTER 31

TENNESSEE LOCAL DEVELOPMENT AUTHORITY ACT

Part 1. General Provisions

Section
4-31-101. Short title.
4-31-102. Chapter definitions.
4-31-103. Authority created — Organization and administration.
4-31-104. Powers.
4-31-105. Bonds and notes — Issuance and terms — Designation of state-shared taxes.
4-31-106. Bonds and notes — Default — Remedies.
4-31-107. Bonds and notes — Issuance to fund state loan programs.
4-31-108. Program loans — Comptroller's certification — Handling of funds.
4-31-109. Bonds and notes — Issuance to fund pollution control facilities.
4-31-110. Bonds and notes issued under § 4-31-109 — Limitations.
4-31-111. Bonds and notes — Holders' rights preserved.
4-31-112. Bonds and notes — Negotiable instruments.
4-31-113. Bonds and notes — Tax exemption.
4-31-114. Bonds and notes — Legal investments and lawful security.
4-31-115. Powers supplemental — Construction.
4-31-116. Expenses.
4-31-117. Annual report and audit.
4-31-118. Loans for acquisition and improvement of mental health and developmental disability facilities.
4-31-119. Authority of the Tennessee local development authority to allocate the national qualified energy conservation bond limitation — Administration of programs — Issuance of bonds for qualified energy conservation projects.
4-31-120. Bonds and notes — Maintenance of tax-exempt status.

Part 2. Tennessee Agricultural Development Act

4-31-201. Short title.
4-31-202. Legislative findings.
4-31-203. Loans — General power of authority.
4-31-204. Loans — Prerequisites to action under § 4-31-203.
4-31-205. Bonds and notes.
4-31-206. False statements — Felony.

Part 3. Industrial Development Loan Program of 1981

4-31-301. Short title.
4-31-302. Program established.
4-31-303. Participation in program.

Section
4-31-304. Loans — Priority.
4-31-305. Loans — Maximum amount.
4-31-306. Rules for administration.
4-31-307. Loans — Applications.
4-31-308. Loans — Approval — Fund allocation.

Part 4. Tennessee Local Development Authority Capital Projects Loan Act of 1990

4-31-401. Short title.
4-31-402. Legislative intent.
4-31-403. "Construction" defined.
4-31-404. Loans for capital projects authorized for local government units receiving state-shared taxes — Schedule of payments.
4-31-405. Administration of loans.
4-31-406. Loan agreements.
4-31-407. Further agreements and guarantees.
4-31-408. Preparation and approval of agreements — Approval of funding — Payments subject to audit.
4-31-409. Allocation of funds — Criteria.
4-31-410. Tax levy to meet payments.
4-31-411. Failure to make payments — Withholding of shared revenues authorized.
4-31-412. Enforcing of agreement by court action.
4-31-413. Debt limit not applicable.
4-31-414. Actions of governing body by resolution.
4-31-415. Provisions supplemental.

Part 5. Tennessee Local Development Authority Rural Fire Protection Equipment Act of 1986

4-31-501. Short title.
4-31-502. Intent.
4-31-503. Part definitions.
4-31-504. Loans for the purchase of equipment for the use of county or volunteer fire departments by counties receiving state-shared taxes — Schedule of payments.
4-31-505. Administration of loans.
4-31-506. Loan agreements.
4-31-507. Further agreements and guarantees.
4-31-508. Approval of agreements — Payments subject to audit.
4-31-509. Allocation of funds — Criteria.
4-31-510. Tax levy to meet payments.
4-31-511. Failure to make payments — Withholding of state-shared revenues authorized.
4-31-512. Authority to establish rural fire protection equipment fund — Disposition of funds.
4-31-513. Enforcing of agreement by court action.
4-31-514. Debt limit not applicable.
4-31-515. Actions of governing body by resolution.
4-31-516. Provisions supplemental.

Part 6. TLDA Airport Loan Act of 1988

4-31-601. Short title.
4-31-602. Legislative intent.
4-31-603. Part definitions.
4-31-604. Financing of projects for use of airport authorities and municipal airports — Schedule of payments.
4-31-605. Administration of loans.
4-31-606. Loan agreements.
4-31-607. Guarantees by municipality of loan agreement.
4-31-608. Further agreements and guarantees with authority.
4-31-609. Approval of agreements — Audits.
4-31-610. Bonds and notes — Issuance and terms — Security — Defaults.
4-31-611. Airport authority fund.
4-31-612. Enforcement of agreements.
4-31-613. Debt limit not applicable.
4-31-614. Actions of governing body.
4-31-615. Provisions supplemental.

Part 7. Tennessee Local Development Authority Mental Health and Mental Retardation Facilities Act of 1990

Section
4-31-701. Short title.
4-31-702. Legislative intent.
4-31-703. Part definitions.
4-31-704. Issuance and sale of bonds and notes — Loans — Authorization.
4-31-705. Repayment of loans.
4-31-706. Issuance of bonds or notes — Limitations — Deficiency.
4-31-707. Administration of loans — Loan agreement — Security.
4-31-708. Notice of failure to remit funds — Withholding of funds.
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PART 1

GENERAL PROVISIONS

4-31-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Local Development Authority Act."

History.
Acts 1978, ch. 785, § 1; T.C.A., § 4-3101.

Cross-References.
Bonds for construction of waterworks, see Waterworks under BONDS in the Index to Uncodified Public Chapters, Volume 16.

4-31-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agricultural development loan program" means the authority's program of providing loans to lenders or purchasing loans from lenders for the purpose of making funds available for the financing of agricultural enterprises;

(2) "Agricultural enterprise" means the acquisition, reconstruction or improvement of land or buildings or other improvements thereto, or any combination thereof, and any breeding stock and machinery or equipment necessary or suitable for use in farming, ranching, the production of agricultural commodities, including the products of agriculture and silviculture, or necessary and suitable for treating, processing, storing or transporting raw agricultural commodities;

(3) "Authority" means the Tennessee local development authority, a public agency and instrumentality of the state, created by this chapter, or if such authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or to which the powers and duties granted or imposed upon the authority shall be given by law;

(4) "Bond" means any bond authorized and issued pursuant to this chapter;

(5) "Capital project" means the same as "public works project" as defined in § 9-21-105;

(6) "Department" means the department of environment and conservation, or, if the department shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or to which the powers and duties granted or imposed upon the department shall be given by law;

(7) "Industrial development authority" means the Tennessee industrial development authority, or, if the industrial development authority shall be

abolished, the board, body, commission or agency succeeding to the principal functions thereof or to which the powers and duties granted or imposed upon the industrial development authority shall be given by law;

(8) "Lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, federal or state chartered savings and loan association or building and loan association, insurance company, or mortgage loan company;

(9) "Loan insurer" or "loan guarantor" means an agency, department, administration or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture or the veterans administration of the United States, any private mortgage insurance company or any other public or private agency that insures or guarantees loans;

(10) "Loan program agreement" means a contractual arrangement by and between a local government unit and the authority pursuant to and in accordance with part 4 of this chapter providing for loans to such local government units for the purpose of paying the cost of the construction of capital projects and a contractual arrangement by and between a local government unit and the state acting by and through the department, pursuant to and in accordance with [former] title 68, chapter 211, part 4 [repealed], or title 68, chapter 221, parts 2 and 5 providing for loans to such local government unit for the purpose of paying the cost of the construction of sewage treatment works, waterworks, or energy recovery facilities and/or solid waste resource recovery facilities, as the case may be, which loans are made or are to be made from the proceeds of bonds or notes issued pursuant to this chapter;

(11) "Local government unit" means any county, metropolitan government, incorporated town or city, or special district of the state, water/wastewater authority or any energy authority created by an act of the general assembly;

(12) "Note" means any note authorized and issued pursuant to this chapter;

(13) "Pollution" means the placing of any noxious or deleterious substances, including noise, in any air or water or land of or adjacent to the state or affecting the physical, chemical or biological properties of any air or waters or land of or adjacent to the state in a manner and to an extent that renders or is likely to render such air or waters or land inimical or harmful to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters or land for domestic, industrial, agricultural or recreational purposes;

(14) "Pollution control facilities" means any equipment, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith having to do with or the end purpose of which is the control, abatement or prevention of water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, waste water collecting system, waste water treatment works, or solid waste

disposal facility;

(15) "Program loans" means loans or grants made to a local government unit by the state that are required to be repaid pursuant to a loan program agreement;

(16) "Small business concern" means an enterprise that constitutes a "small business concern" under federal law and the criteria used by the administrator of the small business administration of the United States as the same may be amended from time to time;

(17) "Small business financing agreement" means a lease, sublease or loan agreement entered into between a small business concern and the authority, the payments under which have been guaranteed by the small business administration of the United States or any other agency thereof;

(18) "State" means the state of Tennessee;

(19) "State loan programs" means the activities and policies undertaken by the state pursuant to title 68, chapter 221, part 2 to provide assistance to local government units by making grants that are required to be repaid for the construction of sewage treatment works, or pursuant to title 68, chapter 221, part 5, to provide assistance to local government units by making loans for the construction of waterworks, or pursuant to [former] title 68, chapter 211, part 4 [repealed], to provide assistance to local government units by making loans for the construction of energy recovery facilities or solid waste resource recovery facilities, or both, or pursuant to part 4 of this chapter to provide assistance to local government units by making loans for the construction of capital projects; and

(20) "State-shared taxes" means taxes imposed and collected by the state pursuant to law and allocated by law to local government units, whether allocated for a particular purpose or for the general use of such local government units.

History.

Acts 1978, ch. 785, § 2; T.C.A., § 4-3102; Acts 1981, ch. 394, § 3; 1982, ch. 873, § 10; 1986, ch. 846, §§ 1-3; 1990, ch. 885, §§ 1, 2; 1992, ch. 693, § 1; 2009, ch. 409, § 1; 2012, ch. 957, § 1.

Compiler's Notes.

Former title 68, chapter 211, part 4 referred to in this section, concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

Cross-References.

Funding for rural fire protection equipment, title 4, chapter 31, part 5.

4-31-103. Authority created — Organization and administration.

(a) There is hereby created a body, politic and corporate, to be known as the "Tennessee local development authority."

(b) The authority shall be a public agency and an instrumentality of the state and shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and to be serving a public purpose in improving and otherwise promoting the health, welfare and prosperity of the people of the state.

(c)(1) Its membership shall consist of the governor, the secretary of state, the state treasurer, the comptroller of the treasury and the commissioner of finance and administration, and their successors in office from time to time,

by virtue of their incumbency in such offices and without further appointment or qualification, together with one (1) member who shall be appointed by the speaker of the senate from a list of three (3) individuals nominated by the Tennessee county services association, and one (1) member who shall be appointed by the speaker of the house of representatives from a list of three (3) individuals nominated by the Tennessee municipal league, each of whom shall serve for a period of two (2) years, subject to reappointment, or until such member's successor is similarly nominated and appointed.

(2) The governor, the secretary of state, the state treasurer, the comptroller of the treasury and the commissioner of finance and administration shall be designated as ex officio members of the authority. Each ex officio member of the authority may designate a member of the ex officio member's respective staff to attend meetings of the authority or its committees and to exercise the ex officio member's right to vote in the ex officio member's absence. The designation must be made in writing addressed to the secretary of the authority specifying the meeting for which the designation is effective and filed with the secretary of state.

(3)(A) The member appointed by the speaker of the senate and the member appointed by the speaker of the house of representatives shall not participate in or vote on any proceeding before the authority relative to the agricultural development loan program.

(B) For purposes of administering the agricultural development loan program, the governor may appoint two (2) individuals knowledgeable in agricultural enterprise to serve as nonvoting advisors to the authority.

(C) The recommendations of such advisors attending any meeting of the authority shall be part of the minutes.

(D) Such advisors shall serve without compensation but shall be reimbursed in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The governor shall serve as chair of the authority, and the comptroller of the treasury shall serve as secretary.

(e)(1) The members shall serve without salary, but each member shall be entitled to reimbursement for such member's actual and necessary expenses incurred in the performance of such member's official duties.

(2) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(f)(1) The authority and its corporate existence shall continue until terminated by law; provided, that no such law shall take effect so long as the authority shall have bonds, notes or other obligations outstanding.

(2) Upon termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.

(g)(1) The powers of the authority shall be vested in and exercised by no fewer than four (4) of the members thereof.

(2) The authority may delegate to one (1) or more of its members or its officers such powers and duties as it may deem proper.

(h)(1) Written minutes covering all meetings and actions of the authority shall be prepared by the secretary of the authority and shall be kept on file, open to public inspection.

(2) The minutes and all other records of the authority shall be kept in the office of the comptroller of the treasury.

(i) The authority shall be empowered to act on behalf of the state and its people in serving this public purpose for the benefit of the general public.

History.
Acts 1978, ch. 785, § 3; T.C.A., § 4-3103;
Acts 1981, ch. 394, § 4; 2009, ch. 113, § 1.

4-31-104. Powers.

Except as otherwise limited by this chapter, the authority has the power to:

(1) Sue and be sued;

(2) Have a seal and alter the same at pleasure;

(3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

(4) Subject to agreements with bondholders or noteholders, make rules and regulations governing the conduct of its meetings and the use and application of its money and properties;

(5) Borrow money and issue negotiable bonds, notes or other obligations in the principal amounts and for the purposes authorized by law, and provide for the rights of the holders of such bonds, notes or other obligations;

(6) Invest any funds held in reserve or sinking funds, or any moneys not required for immediate use or disbursement at the discretion of the authority in any investments or securities in which moneys of the state are authorized to be invested;

(7) In connection with the issuance of bonds or notes of the authority, make and collect such rents, fees and charges, including, but not limited to, reimbursement of all costs of financing by the authority as the authority shall determine to be reasonable and required;

(8) Accept any gifts or grants or loans of funds or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or from any other source and to comply, subject to this chapter, with the terms and conditions thereof;

(9) Accept the assignment of the right to receive money paid under loan program agreements;

(10) Engage the services of attorneys and consultants on a fee or contract basis for the rendering of professional and technical assistance and advice;

(11) Do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this chapter;

(12) Procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States, for payment of any bonds or notes issued by the authority to fund its state loan programs and its agricultural development loan program, including the power to pay premiums on any such insurance;

(13) Enter into agreements with any department, agency or instrumen-

tality of the United States or the state and with lenders, and enter into loan agreements, sales contracts and leases with contracting parties for the purpose of planning, regulating and providing for the financing or refinancing of any agricultural enterprise;

(14) Enter into contracts or agreements with lenders for the servicing and processing of loans made to finance agricultural enterprises;

(15) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises and distribute data and information concerning the encouragement and improvement of agricultural enterprises and agricultural employment in the state;

(16) To the extent permitted under a resolution authorizing notes or bonds to fund the agricultural development loan program, consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease or agreement of any kind to which the authority is a party;

(17) To the extent permitted under a resolution authorizing notes or bonds to fund the agricultural development loan program for financing certain agricultural enterprises, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency or instrumentality of the United States or of the state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed;

(18) Enter into agreements for management on behalf of the authority of any of its properties acquired under the agricultural development loan program upon such terms and conditions as may be mutually agreeable;

(19) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority, when such loan or other obligation is held by the authority pursuant to the agricultural loan program;

(20) Foreclose any mortgages, deeds of trust, notes, debentures, bonds and other security interests held by it relative to an agricultural enterprise either by action or by exercise of a power of sale, and sell the equity of redemption in such security interests in accordance with the terms of such instruments and applicable state law, and take all such other actions as may be necessary to enforce any obligation held by it;

(21) Purchase the equity of redemption in any such mortgage, deed of trust, note, debenture, bond or other security interest;

(22) Mortgage, pledge, assign or grant security interests in any or all of its notes or other instruments, contract rights or other property, including, but without limitation to, any receipts from insurance on or guarantees of any of its notes or other instruments or any receipts from state-shared taxes, as security for the payment of the principal of and interest on any notes or bonds issued by the authority, or as security for any agreements made in connection therewith, whether then owned or thereafter acquired;

(23) Sell, exchange, donate and convey any or all of its properties whenever the authority shall find such action to be in furtherance of the purposes for which the authority was created;

(24) Make and execute contracts and all other instruments necessary or convenient to do any and all things, including the issuance of rules and regulations, for the exercise of its powers and functions under the Wastewater Facilities Act of 1987, compiled in title 68, chapter 221, part 10;

(25) When entering into any contracts or agreements authorized under this chapter, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, however, that jurisdiction over the authority against which an action on such a contract or agreement is brought shall lie solely in a court located in Tennessee that would otherwise have jurisdiction of actions brought in contract against the authority; and

(26) For purposes of financing the acquisitions and improvements of facilities previously financed under part 7 of this chapter and from funds available, lend moneys to local government units to be repaid with revenues of such facilities under such terms and conditions deemed appropriate by the authority.

History.

Acts 1978, ch. 785, § 4; T.C.A., § 4-3104; Acts 1981, ch. 394, § 5; 1982, ch. 873, § 11; 1986, ch. 846, § 4; 1987, ch. 299, § 16; 2001, ch. 253, § 1; 2003, ch. 355, § 64.

Compiler's Notes.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Cross-References.

Bonds for construction of waterworks, see Waterworks under BONDS in the Index to Uncodified Public Chapters, Volume 16.

Duties concerning construction of sewage treatment works, title 68, ch. 221, part 2.

Duties concerning waterworks construction loans, title 68, ch. 221, part 5.

4-31-105. Bonds and notes — Issuance and terms — Designation of state-shared taxes.

(a)(1)(A) Whenever the authority is authorized by law to issue bonds or notes, the bonds and notes shall be authorized by resolution of the authority, may be in one (1) or more series, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof, not exceeding eight (8) years from the date of issue of such original note, and in the case of any such bond not exceeding thirty (30) years from the date of issue, as such resolution or resolutions may provide.

(B) In its discretion, the authority by resolution may provide that a note or any renewal of such note may mature more than eight (8) years from the

date of issue of such original note; provided, that:

(i) The local government units whose projects were financed pursuant to loan program agreements with the proceeds of such note or renewal note shall have begun repayment of principal in accordance with a payment schedule established by the authority; and

(ii) The maturity of such note or any renewal note or bond refunding such notes financing such program agreements shall not exceed thirty (30) years from the date of issue of such original note.

(2) The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide.

(3) The bonds and notes may be sold at public or private sale, at such price or prices as the authority shall determine.

(4) With respect to all or any portion of any issue of bonds or notes issued or anticipated to be issued hereunder, the authority may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements and options in respect thereto, from time to time and under such terms and conditions as the authority may determine, including, without limitation, provisions permitting the authority to pay to or receive from any person or entity for any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(5) The authority may enter into an agreement to sell its bonds or notes under this chapter, providing for delivery of such debt not more than five (5) years, or such greater period of time if approved by the comptroller of the treasury, from the date of execution of such agreement or in the case of refunding bonds the earlier of the first date on which the bonds being refunded can be optionally redeemed resulting in cost savings or be optionally redeemed at par.

(b) Any resolution or resolutions authorizing any bonds or notes, or any series thereof, may contain the following provisions, which shall be a part of the contract with the holders thereof:

(1) Pledging all or any part of the moneys that the authority is permitted by law to pledge, and securing the payment of the bonds or notes or of any series thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) Creating and establishing such funds and accounts as may be deemed necessary or advisable and setting aside reserves or sinking funds and agreeing as to the maintenance, regulation and disposition thereof;

(3) Limiting the purpose to which the proceeds of sale of bonds or notes may be applied, and pledging such proceeds to secure the payment of the bonds or notes or of any series thereof;

(4) Limiting the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(5) Prescribing the procedure, if any, by which the terms of any contract

with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(6) Investing in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 4-31-106 and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, powers and duties of such trustee; or

(7) Setting forth any other matters, of like or different character, that in any way affect the security or protection of the bonds or notes.

(c)(1) The authority by resolution may, from time to time, identify those taxes constituting state-shared taxes and, upon approval of the form and substance of such resolution by the attorney general and reporter, such identification shall be conclusive as to those taxes that constitute state-shared taxes; provided, that nothing contained in this subsection (c) shall be deemed to require the general assembly to continue to impose any tax identified as a state-shared tax or to maintain such tax at any particular level.

(2) As of January 1, 1986, the identification by the authority of the following taxes as state-shared taxes is hereby ratified and confirmed:

(A) The tax on income from stocks and bonds, distributed pursuant to title 67, chapter 2;

(B) The gasoline tax, distributed pursuant to title 67, chapter 3;

(C) The motor vehicle fuel use tax, distributed pursuant to [former] title 67, chapter 3, part 8 [repealed];

(D) The sales tax, distributed pursuant to title 67, chapter 6;

(E) The mixed drink tax, distributed pursuant to title 57, chapter 4;

(F) The alcoholic beverage tax, distributed pursuant to title 57, chapter 3;

(G) The beer tax, distributed pursuant to title 57, chapter 5; and

(H) The federal payments in lieu of taxes, distributed pursuant to title 67, chapter 9.

(3) A local government unit shall not have any claim on state-shared taxes withheld as permitted under the terms of the state loan program.

(d)(1) The authority, subject to such agreements with bondholders or noteholders as may then exist, shall have power to purchase notes or bonds out of any moneys available therefor at a price not exceeding:

(A) The redemption price then applicable, plus accrued interest to the next interest payment date thereon, if the notes or bonds are then redeemable; or

(B) The redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption, plus accrued interest to such date if the notes or bonds are not then redeemable.

(2) All bonds and notes so purchased shall be cancelled.

(e) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) In the event any member of the authority whose signature or facsimile signature thereof shall appear on any bonds or coupons shall cease to be a member of the authority before the delivery thereof, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes, the same as if such member had remained a member of the authority until after such delivery.

(g)(1) Any pledge made by the authority pursuant to this chapter or by a local government unit pursuant to a loan program agreement shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the authority or local government unit, as applicable, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority or local government unit, as applicable, irrespective of whether such parties have notice thereof.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(h)(1) The bonds and notes shall not be invalid for any irregularity or defect in the proceedings for the issuance or sale thereof.

(2) Such bonds and notes shall contain a recital that they have been authorized and issued pursuant to the laws of the state, including particularly this chapter, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(3) Bonds and notes of the authority shall not constitute a debt or a pledge of the faith and credit of the state or any local government unit, and the holders or owners of such bonds and notes shall have no right to have taxes levied by the general assembly or any local government unit or any other taxing authority within the state for the payment of the principal of, premium, if any, and interest on, such bonds and notes, but such bonds and notes shall be payable solely from the revenues and moneys pledged for their payment.

(4) All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes are not a debt of the state or any local government unit or any other taxing authority within the state, but are payable solely from revenues and moneys pledged to the payment thereof.

History.

Acts 1978, ch. 785, § 5; T.C.A., § 4-3105; Acts 1982, ch. 873, § 12; 1986, ch. 846, §§ 5, 6; 1989, ch. 233, § 1; 1990, ch. 885, § 3; 2001, ch. 253, § 2; 2003, ch. 298, § 6.

Compiler's Notes.

Title 67, ch. 3, part 8, referred to in this section, was repealed by Act 1997, ch. 316, § 1. For new provisions concerning the petroleum product tax, see title 67, ch. 3, parts 1-14.

Cross-References.

Bonds for construction of waterworks, see Waterworks under BONDS in the Index to Uncodified Public Chapters, Volume 16.

Funding for rural fire protection equipment, title 4, ch. 31, part 5.

4-31-106. Bonds and notes — Default — Remedies.

(a) In the event that the authority shall default in the payment of principal of or interest and premium, if any, on bonds or notes similarly secured after the same shall become due, whether at maturity or upon call for redemption, and

such default shall continue for a period of thirty (30) days, or in the event that the authority shall fail or refuse to comply with this chapter, or shall default in any agreement made with the holders of bonds or notes similarly secured, the holders of twenty-five percent (25%) in aggregate principal amount of such bonds and notes then outstanding, by instrument or instruments filed in the office of the comptroller of the treasury and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided in this section.

(b) Such trustee may, and upon written request of the holders of twenty-five percent (25%) in principal amount of such bonds and notes then outstanding shall, in such trustee's own name:

(1) By suit, action or proceeding at law or in equity in any court of competent jurisdiction, enforce all rights of the bondholders or noteholders, including the right to require the authority to collect the moneys payable to it and to require the authority to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this chapter;

(2) Bring suit upon such bonds or notes;

(3) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such bonds and notes;

(4) By action or suit, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of such bonds or notes; and

(5) Declare all such bonds or notes due and payable and, if all defaults shall be made good, then, with the consent of the holders of the twenty-five percent (25%) of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(c) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specially set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(d) Notwithstanding the preceding provisions of this section, the authority may provide in resolution or resolutions authorizing such bonds and notes for the limitation or abrogation of the rights of a trustee if the particular default shall have been remedied or cured or proper action is diligently being pursued by the authority, to remedy or cure default.

History.
Acts 1978, ch. 785, § 6; T.C.A., § 4-3106.

4-31-107. Bonds and notes — Issuance to fund state loan programs.

(a) For the purpose of providing moneys to make program loans under the state loan programs or to retire general obligation bond anticipation notes of the state issued to provide interim financing for such program loans the authority, in addition to the powers otherwise granted by law, shall have the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in such principal amounts as may from time to time be authorized by law.

(b) The proceeds of such bonds and notes shall be applied by the authority, as it deems necessary, to provide sufficient moneys to carry out the purposes of

the state loan programs, including the retirement of general obligation bond anticipation notes of the state issued to provide interim financing for the state loan programs, to provide for the payment of interest on such bonds and notes for a reasonable time after issuance, to establish reserves to secure such bonds and notes, and to provide for the payment of costs incident to the issuance of such bonds and notes.

(c) Bonds or notes issued by the authority to provide for loans to local government units pursuant to title 68, chapter 221, part 2 for the construction of sewage treatment works, pursuant to title 68, chapter 221, part 5 for the construction of water works, or pursuant to [former] title 68, chapter 211, part 4 [repealed], for the construction of energy recovery facilities and/or solid waste resource recovery facilities shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to part 4 of this chapter to provide for loans to local government units for the construction of capital projects, or with bonds or notes issued pursuant to any other provisions of this chapter or any other law, nor shall bonds or notes issued by the authority pursuant to part 4 of this chapter to provide loans to local government units for the construction of capital projects be issued and sold as part of an issue of bonds or notes issued pursuant to any other provision of this chapter or any other law; provided, that the foregoing shall not prohibit the issuance of separate issues of bonds or notes pursuant to this section.

(d)(1) The authority has the power, and is hereby authorized, to issue from time to time renewal notes, and bonds to pay notes issued in anticipation of such bonds, and, whenever it deems refunding expedient, to refund any bonds by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose.

(2) Such refunding bonds and renewal notes may be issued without further authorization, such issuance being deemed authorized by the law authorizing the bonds and notes to be renewed, paid or refunded.

(3) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(e) Except as may otherwise be expressly provided by the authority, each issue of its notes or bonds issued pursuant to this section shall be limited special obligations of the authority payable solely from and secured solely by moneys derived by the authority from all or a portion of payments made by local government units, pursuant to the loan program agreements with such local government units or moneys withheld from state-shared taxes apportioned to such local government units as permitted under the state loan programs, as provided in the resolution authorizing such bonds and notes.

(f) The authority is hereby authorized to issue its bonds and notes in such manner as provided by this chapter.

History.

Acts 1978, ch. 785, § 7; T.C.A., § 4-3107; Acts 1982, ch. 873, § 13; 1984, ch. 965, § 1; 1986, ch. 846, §§ 7-11; 1989, ch. 233, §§ 2, 3; 1990, ch. 885, §§ 4, 5; 2003, ch. 298, § 7.

Compiler's Notes.

Title 68, chapter 211, part 4, referred to in this section and concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

Cross-References.
Funding for rural fire protection equipment, title 4, ch. 31, part 5.

4-31-108. Program loans — Comptroller's certification — Handling of funds.

(a) The comptroller of the treasury shall file a certificate with the authority setting forth with respect to each local government unit that will receive a program loan:

(1) The name of such local government unit;

(2) The amount of such program loan;

(3) That the loan program agreement pursuant to which the program loan to be made is entered into pursuant to, and in accordance with, title 68, chapter 221, part 2 or part 5, [former] title 68, chapter 211, part 4 [repealed], or part 4 of this chapter as the case may be;

(4) The total, at the time of approval of the program loan with respect to which such certificate relates, of all program loans under the state loan programs made to the local government unit, whether financed from the proceeds of bonds or notes issued pursuant to § 4-31-107 or from the proceeds of general obligation bonds or bond anticipation notes of the state;

(5) The total amount, at the time of approval of the program loan with respect to which such certificate relates, of payments to the state required to be made in each fiscal year of the state under loan program agreements, excluding payments that will be required on account of the program loan with respect to which such certificate relates, or under contracts providing for program loans from the proceeds of general obligation bonds or bond anticipation notes;

(6) The amount of state-shared taxes received in the prior fiscal year of the state as shown by the latest completed audit for the state's fiscal year preceding the time of approval of the program loan with respect to which such certificate relates;

(7) The amount, at the time of approval of the program loan with respect to which such certificate relates, of indebtedness, other than under loan program agreements, having a prior lien on state-shared taxes as certified by the local government unit; and

(8) The total amount, at the time of approval of the program loan with respect to which such certificate relates, of payments to the state required to be made in each fiscal year of the state under loan program agreements, including payments that will be required on account of the program loan with respect to which such certificate relates, and under contracts providing for program loans from the proceeds of general obligation bonds and bond anticipation notes.

(b) In the preparation of the certificate required by subsection (a), the comptroller of the treasury, in determining the amount of payments to the state required to be made in each fiscal year of the state under loan program agreements, including the loan program agreement with respect to which such certificate relates, and under contracts providing for program loans from the proceeds of general obligation bonds or bond anticipation notes, shall:

(1) With respect to program loans that have been funded from the proceeds of bonds of the authority or the proceeds of general obligation bonds of the state, utilize the actual debt service requirements under such loan program agreements or contracts; and

(2) With respect to program loans for which no funding has yet been provided or for which interim financing from the proceeds of notes or from other available moneys is being provided, utilize the debt service requirements under such loan program agreements determined by the state funding board at the time of approval of such loan program agreement as if the bonds to be issued to fund such program loans will bear interest at such rate per annum and mature in such manner as the state funding board shall establish at the time of such approval.

(c) Each certificate may relate to one (1) or more local government units, program loans, or both, and be prepared in such form and manner as the comptroller of the treasury deems advisable.

(d)(1) No proceeds of bonds or notes shall be applied by the authority to provide moneys to make a program loan to any local government unit unless the certificate of the comptroller of the treasury prepared pursuant to subsection (a) shows that the ratio of unobligated state-shared taxes to the maximum annual amount of program loan payments complies with the statutes governing the state loan programs.

(2) For purposes of this subsection (d) and subsection (i):

(A) "Maximum annual amount of program loan payments" means the total amount of payments to the state by such local government unit required to be made in any fiscal year of the state under loan program agreements determined as provided in this section, including payments that will be required on account of the program loan with respect to which such certificate relates, and under contracts, other than loan program agreements, providing for program loans from the proceeds of general obligation bonds and bond anticipation notes; and

(B) "Unobligated state-shared taxes" means the total amount of state-shared taxes shown in the certificate that such local government unit received in the prior fiscal year of the state as shown by the latest completed audit for the state's fiscal year, after deducting the amount of such state-shared taxes applied to other indebtedness of such local government unit in such fiscal year.

(e) Prior to the issuance of bonds pursuant to § 4-31-107, the comptroller of the treasury shall file with the authority a certificate:

(1) Setting forth the total amount of bonds to be issued, stating separately:

(A) The amount from proceeds of the proposed bonds allocable to program loans, whether to finance a program loan or to retire notes theretofore issued to finance a program loan;

(B) The estimated amount, if any, in order to provide for the payment of interest on such bonds for a stated period after issuance;

(C) The estimated amount, if any, required to establish reserves;

(D) The estimated amount, if any, required to provide for the payment of costs incident to the issuance of such bonds; and

(2) Certifying, with respect to each local government unit to which a program loan is to be made or refinanced from the proceeds of such bonds, that a loan program agreement is in effect, that the certificate required pursuant to subsection (a) with respect to each such program loan has been filed with the authority, and that the aggregate of the payments to be made to the state by all local government units under all loan program agreements will be sufficient, together with other funds available for such purpose, to pay the principal of, and interest and premium, if any, on all bonds issued to finance program loans and to fulfill any and all other obligations of the authority.

(f) Prior to the issuance of notes pursuant to § 4-31-107, the comptroller of the treasury shall file with the authority a certificate:

(1) Setting forth the total amount of notes to be issued, stating separately:

(A) The amount from the proceeds of the proposed notes allocable to program loans, whether to finance a program loan or to retire other notes theretofore issued to finance a program loan;

(B) The estimated amount, if any, in order to provide for the payment of interest on such notes for a stated period after issuance;

(C) The estimated amount, if any, required to establish reserves;

(D) The estimated amount, if any, required to provide for the payment of costs incident to the issuance of such notes; and

(2) Certifying, with respect to local government units to which program loans are to be made from at least seventy-five percent (75%) of the proceeds of such notes available for program loans, that the loan program agreements are in effect and that the issuance of such notes will not affect the ability of the authority to pay the principal of, interest and premium, if any, on any bonds of the authority issued to finance program loans and to fulfill any and all other obligations of the authority.

(g) Pending application of the proceeds of bonds or notes to provide program loans as provided herein, such proceeds shall be held in trust for the benefit of the holders of such bonds or notes, as the case may be.

(h) The authority is hereby authorized to establish in the state treasury a separate special trust fund of the authority for each separate issue of bonds or notes that is similarly secured, to be known as the "state loan programs fund" and to bear such additional designation as the authority deems appropriate to properly identify each fund. The state hereby covenants and agrees that from and after the issuance of any bonds or notes under and pursuant to § 4-31-107 then, notwithstanding any other law, and particularly title 68, chapter 221, parts 2 and 5, and [former] title 68, chapter 211, part 4 [repealed], moneys derived by the state from payments made by local government units pursuant to loan program agreements with such local government units and moneys withheld from state-shared taxes apportioned to such local government units as permitted under the terms of the state loan programs that are pledged to the payment of such bonds or notes shall be paid into the particular state loan programs fund established for the issuance of bonds or notes to which such moneys are pledged, and such moneys shall be accounted for separately from all other moneys in the state treasury and shall be applied by the authority solely for the purpose of paying principal of and interest and premium, if any,

on such issue of bonds and notes issued pursuant to § 4-31-107, refunding moneys due to participating local government units where appropriate, and paying all other costs incidental to the administration of the authority in connection with the state loan programs and the issuance of such issue of bonds and notes.

(i)(1) There is hereby established a separate special trust fund of the state to be known as the "local development authority statutory reserve fund."

(2) There shall be deposited in such statutory reserve fund all moneys from whatever source, including appropriations pursuant to law, received by the authority for such purpose.

(3) The statutory reserve fund shall be established and maintained in an amount equal to the statutory reserve fund requirement.

(4) For purposes of this subsection (i):

(A) "Program loan certificate" means the certificate of the comptroller of the treasury prepared pursuant to subsection (a);

(B) "Statutory reserve fund requirement" means the total amount obtained by adding the amount for each program loan arrived at by subtracting the total unobligated state-shared taxes shown on the program loan certificate relating to such program loan from the maximum annual amount of payments shown on the program loan certificate relating to such program loan.

(5) At the end of each calendar year, the authority shall certify to the governor the amount of the deficiency, if any, on deposit in the statutory reserve fund, valuing investments in such fund at face value, and there shall be included in the governor's recommended budget next submitted to the general assembly a line item appropriation in the amount equal to the deficiency in the amount required to be on deposit in the statutory reserve fund, which amount, if appropriated, shall be apportioned and paid to the authority for deposit in the statutory reserve fund.

(6) Moneys on deposit in the statutory reserve fund shall be invested and reinvested from time to time by the authority in securities and obligations deemed appropriate by the authority, including securities or obligations, the interest on which is exempt from federal income taxes. Any earnings from such investment and reinvestment shall accrue to the benefit of the statutory reserve fund; provided, that at the end of each fiscal year, any amount in such fund in excess of two hundred percent (200%) of the amount required hereby to be maintained in such fund shall revert to the general fund in accordance with the applicable provisions of the general appropriations bill.

(7) The moneys held in the statutory reserve fund shall be a trust fund for the benefit of the holders of the bonds and notes of the authority issued pursuant to § 4-31-107, and shall be paid to the authority, upon request of the authority, whenever any local government unit shall fail to make a payment required under a program loan agreement and there are insufficient state-shared taxes available to the authority to be withheld as permitted under the state loan programs to permit the payment of principal of or interest on bonds or notes of the authority issued pursuant to § 4-31-107 in accordance with the terms of such bonds or notes.

History.

Acts 1978, ch. 785, § 8; T.C.A., § 4-3708; Acts 1981, ch. 128, § 1; 1982, ch. 873, § 14; 1984, ch. 965, §§ 2-4; 1986, ch. 846, § 12; 2003, ch. 355, § 57.

Compiler's Notes.

Title 68, chapter 211, part 4, referred to in this section and concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

4-31-109. Bonds and notes — Issuance to fund pollution control facilities.

(a) For the purpose of providing moneys to assist small business concerns in financing pollution control facilities, the authority, in addition to the powers otherwise granted by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in such principal amounts as may from time to time be authorized by law.

(b) The proceeds of such bonds and notes may be loaned by the authority to a small business concern pursuant to a small business financing agreement and applied by such small business concern solely to the payment of the cost of constructing, acquiring, reconstructing, improving, equipping, furnishing, bettering or extending any pollution control facilities of such small business concern, including the payment of engineering, fiscal, architectural and legal expenses incurred in connection with such pollution control facilities and the issuance of the bonds or notes, or may be applied by the authority to the payment of the cost of constructing, acquiring, reconstructing, improving, equipping, furnishing, bettering, or extending any pollution control facilities of such small business concern, including the payment of engineering, fiscal, architectural and legal expenses incurred in connection with such pollution control facilities and the issuance of the bonds or notes, and, in either case, there may be reserved sufficient proceeds of such bonds or notes to provide for the payment of interest on the bonds or notes during construction of any such pollution control facilities and for six (6) months after the estimated date of completion, and for the establishment of a reasonable reserve fund for the payment of principal of and interest on such bonds or notes in the event of a deficiency in the revenues and receipts available for such payment.

(c) Bonds or notes issued pursuant to this section shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provision of this chapter or other law.

(d)(1) The authority has the power, and is hereby authorized, to issue from time to time renewal notes, and bonds to pay notes issued in anticipation of such bonds, and, whenever it deems refunding expedient, to refund any bonds by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose.

(2) Such refunding bonds and renewal notes may be issued without further authorization, such issuance being deemed authorized by the law authorizing the bonds and notes to be renewed, paid or refunded.

(3) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(e)(1) Except as may otherwise be expressly provided by the authority, each

issue of its notes or bonds issued pursuant to this section shall be limited special obligations of the authority payable solely from and secured by moneys derived by the authority from payments made by small business concerns pursuant to small business financing agreements with such small business concerns.

(2) In addition, bonds or notes issued pursuant to this section may be secured by a mortgage or deed of trust covering all or part of the pollution control facilities financed from the proceeds of such bonds or notes, including any enlargements of and additions to any such pollution control facilities thereafter made, or by an assignment and pledge of all or any part of the authority interest in and rights under the small business financing agreement relating to such pollution control facilities, or any thereof, or by both such mortgage or deed of trust and such assignment and pledge.

(f) The authority is hereby authorized to issue bonds and notes the principal amount of which to be outstanding at any one (1) time shall not exceed fifty million dollars ($50,000,000), such bonds to be issued in the manner provided in this chapter to implement the provisions thereof relating to providing moneys to assist small business concerns in financing pollution control facilities.

History.
Acts 1978, ch. 785, § 9; T.C.A., § 4-3109;
Acts 1982, ch. 873, § 15.

4-31-110. Bonds and notes issued under § 4-31-109 — Limitations.

(a) Prior to the issuance of bonds or notes pursuant to § 4-31-109, the industrial development authority shall file with the authority a certificate to the effect that the pollution control facilities to be financed from the proceeds of such bonds or notes constitute pollution control facilities as defined in this chapter, and that assisting the small business concern in financing such pollution control facilities is in furtherance of the public purpose of abating or controlling pollution in the state.

(b) Such certificate by an officer of the industrial development authority shall be conclusive evidence that the pollution control facilities to be financed from the proceeds of such bonds or notes are pollution control facilities that may properly be financed from the proceeds of such bonds or notes.

(c) No bonds or notes shall be authorized by the authority under § 4-31-109 to provide moneys to assist a small business concern in financing pollution control facilities, unless the aforementioned certificate by an officer of the industrial development authority shall have been filed with the authority, and the authority shall receive evidence, as it deems sufficient, that the payments of all moneys by such small business concern that are due under the small business financing agreement entered into by such small business concern and the authority have been guaranteed by the small business administration of the United States under the Small Business Act (15 U.S.C. § 631 et seq.), and Small Business Investment Act of 1958 (15 U.S.C. § 661 et seq.), or otherwise.

History.
Acts 1978, ch. 785, § 10; T.C.A., § 4-3110.

4-31-111. Bonds and notes — Holders' rights preserved.

The state does hereby covenant and agree with the holders of any bonds or notes issued under this chapter, that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such bonds or notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

History.
Acts 1978, ch. 785, § 12; T.C.A., § 4-3111.

4-31-112. Bonds and notes — Negotiable instruments.

Whether or not the bonds or notes issued under this chapter are of such form and character as to be negotiable instruments under the negotiable instruments law, title 47, chapter 3, such bonds or notes shall be and hereby are made negotiable instruments within the meaning of and for all the purposes of the negotiable instruments law, subject only to the provisions of the bonds or notes for registration.

History.
Acts 1978, ch. 785, § 13; T.C.A., § 4-3112.

Cross-References.
Uniform commercial code, title 47, chs. 1-9.

4-31-113. Bonds and notes — Tax exemption.

The state covenants with the purchasers and all subsequent holders and transferees of bonds and notes issued by the authority pursuant to this chapter, in consideration of the acceptance of and payment therefor, the bonds and notes of the authority issued pursuant to this chapter, and the income therefrom, and all moneys received or to be received by the authority and pledged to pay or to secure the payment of such bonds or notes shall at all times be free from taxation by the state or any local governmental unit or other political corporations or subdivisions thereof, except inheritance, transfer and estate taxes.

History.
Acts 1978, ch. 785, § 14; T.C.A., § 4-3113.

4-31-114. Bonds and notes — Legal investments and lawful security.

(a) The bonds and notes issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the state, any local government unit or other political corporations or subdivisions of the state.

(b) Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the state and all public funds of local government units or other political corporations or subdivisions of the state, and such bonds and notes

shall be lawful and sufficient security for these deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

History.
Acts 1978, ch. 785, § 15; T.C.A., § 4-3114.

4-31-115. Powers supplemental — Construction.

(a) The powers conferred by this chapter shall be in addition to the powers conferred by other laws, and the limitations imposed by this chapter shall not affect the powers conferred by any other law, general or special, and, except as provided herein, bonds and notes may be issued hereunder notwithstanding any other such law and without regard to the procedure required by any other such law.

(b) Insofar as this chapter is inconsistent with any other law, general or special, this chapter shall be controlling.

(c) This chapter shall be liberally construed to effect the purposes hereof.

History.
Acts 1978, ch. 785, § 16; T.C.A., § 4-3115.

4-31-116. Expenses.

Expenses incurred by the authority in carrying out each of the programs authorized by this chapter may be made payable from funds made available to each program pursuant to this chapter, and no liability shall be incurred by the authority beyond the extent to which moneys shall have been so provided.

History.
Acts 1981, ch. 394, § 10.

4-31-117. Annual report and audit.

(a)(1) The authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding fiscal year to the governor and the speakers of each house of the general assembly.

(2) The report shall set forth a separate and complete operating and financial statement for each of the programs authorized by this chapter.

(b) The annual report, including financial statements, all books, accounts and financial records of the authority shall be audited annually by the comptroller of the treasury.

(c) All audits performed by the internal audit staff of the authority shall be performed in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9).

History.
Acts 1981, ch. 394, § 11; 1984, ch. 794, § 2; 2004, ch. 656, § 1.

Textbooks.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-31-118. Loans for acquisition and improvement of mental health and developmental disability facilities.

(a) The authority may enter into loan agreements with any local government unit and any local government unit may enter into loan agreements with the authority for loans for acquisitions and improvement of facilities previously financed under part 7 of this chapter.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the local government and shall additionally include, in substance, the following:

(1) The amount of the loan as determined by the authority;

(2) An agreement by the authority to pay part of the amount of the loan to the local government unit during the progress of the acquisition or improvement, or to pay the amount of the loan following completion of the acquisition or improvement, as may be agreed upon by the parties; and

(3) An agreement by the local government unit:

(A) To proceed expeditiously with and complete the project;

(B) To commence operation of the project on its completion, and not to discontinue operations or dispose of the project without the approval of the authority;

(C) To operate and maintain the project in accordance with applicable provisions of this part and in compliance with rules and regulations of the authority;

(D) Not to contract with any corporation for profit, private person or firm for that operation of the same notwithstanding any law authorizing such contracts, except upon approval by the authority of an application to the authority;

(E) To pledge any available sources of revenue to make payment according to a schedule established by the authority, and to make such payments; and

(F) To establish and maintain adequate financial records for the project, and to cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of such audits to the comptroller.

(c) The authority may promulgate any additional rules or regulations concerning the contract and charges in operations of a capital project.

History.
Acts 2003, ch. 355, § 65.

Compiler's Notes.
Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

4-31-119. Authority of the Tennessee local development authority to allocate the national qualified energy conservation bond limitation — Administration of programs — Issuance of bonds for qualified energy conservation projects.

(a) The state delegates to the Tennessee local development authority the authority to allocate on behalf of the state the portion of the "national qualified

energy conservation bond limitation," as defined in § 54D of the Internal Revenue Code of 1986 (26 U.S.C. § 54D [repealed]), that is allocated to the state pursuant to § 54D, in a manner consistent therewith. The authority may make such allocations from a list of recommended allocations presented to it by the department of environment and conservation. The department shall consider both state and local government projects and issuers when developing recommendations.

(b) The department of environment and conservation shall serve as the coordinator and administrator of such qualified energy conservation bond programs, establishing the terms and provisions of the programs and adopting such procedures with respect to such programs as necessary or appropriate.

(c) The authority has the power and is authorized to issue its negotiable bonds for a qualified energy conservation project as a capital project under part 4 of this chapter if the commissioner of environment and conservation certifies that such project complies with a qualified energy conservation bond program developed by the department, which certification shall be conclusive. In applying § 47-14-103, and related provisions of title 47, chapter 14, to such bonds issued by the authority, the effective rate of the interest on any such bond shall be determined by reducing the interest payable by the authority with respect to such bond by the amount of payments from the United States treasury department that the authority expected, at the time of the issuance of such bond, to receive with respect to such bond.

History.
Acts 2009, ch. 608, § 6; 2012, ch. 957, § 2; 2016, ch. 743, § 13.

Compiler's Notes.
Section 54D of the United States Code, referred to in (a), was repealed by Act Dec. 22, 2017, P.L. 115-97, Title I, Subtitle C, Part V, § 13404(a), 131 Stat. 2138, applicable to bonds issued after 12/31/2017, as provided by § 13404(d) of such Act, which appears as 26 USCS § 54 note. It provided for qualified energy conservation bonds.

4-31-120. Bonds and notes — Maintenance of tax-exempt status.

For the purpose of ensuring that the bonds or notes authorized under this chapter and issued after March 8, 2016, maintain their tax-exempt status as may be provided by the Internal Revenue Code of 1986 (26 U.S.C.), as amended, no state officer or employee or user of a capital project, pollution control facility, or any other property financed or refinanced, directly or indirectly, with the proceeds of such bonds or notes, including, but not limited to, borrowers under a program loan agreement, shall authorize or allow any change, amendment, or modification to a project or program financed or refinanced, directly or indirectly, with the proceeds of such bonds or notes which change, amendment, or modification would affect the tax-exempt status of such bonds or notes unless the change, amendment, or modification receives the prior approval of the office of state and local finance in the office of the comptroller of the treasury and the authority. Failure to receive such approval shall render any change, amendment, or modification null and void.

History.
Acts 2016, ch. 571, § 1.

PART 2

TENNESSEE AGRICULTURAL DEVELOPMENT ACT

4-31-201. Short title.

This part shall be known and may be cited as the "Tennessee Agricultural Development Act."

History.
Acts 1981, ch. 394, § 1.

Cross-References.
Chapter definitions, § 4-31-102.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

4-31-202. Legislative findings.

(a) The general assembly finds and declares that:

(1) The high cost and limited availability of agricultural financing threatens to halt needed expansion or even perpetuation of many farm operations and related enterprises in Tennessee;

(2) These conditions severely limit the ability of young persons to begin farming or to carry on family farming traditions;

(3) Resulting shortages in agricultural commodities will aggravate food price inflation; and

(4) Resulting reductions in agricultural employment will contribute to overall unemployment with its attendant problems.

(b)(1) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority be empowered to issue revenue bonds, and to make the proceeds available for loans to farmers and farm-related enterprises that private industry alone would be otherwise unable to serve, at interest rates lower than would otherwise be obtainable.

(2) It is intended that the Tennessee local development authority be vested with all powers necessary to the accomplishment of these purposes.

History.
Acts 1981, ch. 394, § 2.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

4-31-203. Loans — General power of authority.

(a) The authority may make, and undertake commitments to make, loans to or deposits with lenders under the agricultural development loan program for the financing of certain agricultural enterprises under terms and conditions that shall:

(1) Require the proceeds thereof to be used by such lenders to make loans for agricultural enterprises; and

(2) Require that no loans made by such lenders to finance a single

agricultural enterprise shall exceed the aggregate principal amount of five hundred thousand dollars ($500,000).

(b) The authority may invest in, purchase or make commitments to invest in or purchase, and take assignments of, loans made by lenders for the construction, rehabilitation or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase or assignment by the authority:

(1) If the loan was initially made more than six (6) months prior to the date of investment, purchase or assignment; or

(2) If the aggregate principal amount of the loan received by a person exceeds five hundred thousand dollars ($500,000), and in computing that amount a loan received by an individual shall be aggregated with those loans received by such individual's spouse and children, and a loan received by a firm, partnership or corporation shall be aggregated with those loans received by each owner, partner or stockholder thereof.

History.
Acts 1981, ch. 394, § 6; 1983, ch. 115, § 1.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

4-31-204. Loans — Prerequisites to action under § 4-31-203.

(a) Prior to an exercise of powers conferred by § 4-31-203(b), the authority shall:

(1) Require the lender to certify that the loan at the time of making was, is or will be in all respects a prudent investment;

(2) Require the lender to certify that it would not have made the loan if the authority had not agreed to purchase the loan pursuant to § 4-31-203(b);

(3) Require the lender to certify, if the principal amount of the loan is two hundred thousand dollars ($200,000) or more, that the borrower has obtained at least one (1) written declination of credit from a lender in or near the borrower's local community; and

(4) Require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor or that the payment of principal and interest on the notes or bonds be insured or guaranteed.

(b) Prior to the exercise of powers conferred by § 4-31-203, the authority shall for all loans to be made pursuant to the agricultural loan development program for agricultural enterprises:

(1) Require any type of security that it deems reasonable and necessary;

(2) Authorize the reservation of funds by lenders in such amounts and subject to such conditions as the authority considers reasonable and necessary; and

(3) Require that all agriculture enterprises for which funds are advanced, loaned or otherwise provided by the authority under this chapter be in compliance with any state or local land use, zoning, subdivision and other laws applicable to the land upon which such enterprise is located or is to be constructed.

History.
Acts 1981, ch. 394, § 7.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

4-31-205. Bonds and notes.

(a) For the purpose of providing moneys to assist lenders in providing moneys to finance agricultural enterprises, the authority, in addition to the powers otherwise granted by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority.

(b) The proceeds of such bonds and notes may be applied by the authority to the making of loans to or deposits with lenders or the purchase of loans made by lenders as set forth in § 4-31-203.

(c) Bonds or notes issued pursuant to this section shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provision of this chapter or other law.

(d)(1) The authority has the power, and is hereby authorized, to issue from time to time renewal notes, and bonds to pay notes issued in anticipation of such bonds, and, whenever it deems refunding expedient, to refund any bonds by the issuance of refunding bonds whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose.

(2) Such refunding bonds and renewal notes may be issued without further authorization, such issuance being deemed authorized by the law authorizing the bonds and notes to be renewed, paid or refunded.

(3) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(e) Each issue of its notes or bonds issued pursuant to this section shall be limited special obligations of the authority payable solely from and secured by amounts derived by the authority from loans purchased with the proceeds of such bonds or notes, payments made by lenders pursuant to loan agreements with such lenders, or proceeds derived from the certificates of deposit or other obligations of lenders purchased from bond proceeds.

(f) The bonds may be additionally secured by a pledge of any grant, contribution or guarantee from the federal government or any corporation, association, institution or person or a pledge of any money, income or revenue of the authority from any source.

(g) The authority shall not issue bonds and notes under this part in an aggregate principal amount at any one (1) time outstanding exceeding thirty million dollars ($30,000,000), excluding bonds or notes for the payment or redemption of which there has been or will be set aside and held in trust either moneys or direct and general obligations of, or obligations guaranteed by, the United States, or obligations secured by such obligations, or any combination thereof, that are or will be sufficient to pay when due the principal or applicable redemption price and all accrued interest thereon and, if such bonds or notes are to be redeemed, for which notice of redemption has been given or satisfactory provision has been made for the giving of such notice.

History.
Acts 1981, ch. 394, § 8; 1983, ch. 115, § 1.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

4-31-206. False statements — Felony.

(a) It is unlawful for any person to knowingly make, utter or publish a false statement of substance or aid or abet another person in making, uttering or publishing a false statement of substance for the purpose of influencing the authority to make a loan or deposit to finance an agricultural enterprise or to purchase a loan that finances an agricultural enterprise.

(b) A violation of this section is a Class E felony.

History.
Acts 1981, ch. 394, § 9; 1983, ch. 115, § 1; 1989, ch. 591, § 17.

Cross-References.
Penalty for Class E felony, § 40-35-111.

Textbooks.
Tennessee Jurisprudence, 1 Tenn. Juris., Agriculture, § 3.

PART 3

INDUSTRIAL DEVELOPMENT LOAN PROGRAM OF 1981

4-31-301. Short title.

This part shall be known and may be cited as the "Industrial Development Loan Program of 1981."

History.
Acts 1981, ch. 453, § 1.

Cross-References.
Chapter definitions, § 4-31-102.

4-31-302. Program established.

There is hereby established the industrial development loan program, with the purpose of providing loans to small communities in order to finance public facilities that will support industrial development and generate manufacturing jobs in Tennessee.

History.
Acts 1981, ch. 453, § 2.

4-31-303. Participation in program.

Participation in the program shall be limited to:

(1) Local governments of less than twenty-five thousand (25,000) population, according to the latest certified census; and

(2) County governments if the largest community within the county does not exceed fifty thousand (50,000) population, according to the latest certified census, that have unemployment rates that have exceeded the state average for the twelve-month period prior to application, or that have

certified per capita income averages that have not exceeded the state average for the twelve-month period prior to application.

History.
Acts 1981, ch. 453, § 3.

Cross-References.
For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

4-31-304. Loans — Priority.

(a) Loans under this program shall be made only for projects that are designed to stimulate the growth of manufacturing jobs.

(b)(1) The first priority for loans shall be projects that are related to an industrial location or expansion.

(2) Second priority projects shall be those that create the conditions for future industrial growth.

(c) Eligible projects shall be limited to the following:

(1) Water and sewerage treatment plants that will serve industrial land;

(2) Water distribution lines and sewerage collection lines that will serve industrial land;

(3) The development of industrial land (including ports), with eligible costs to include the following:

(A) Land purchase (including easements);

(B) Site preparation;

(C) Extension of utilities, including, but not limited to, electrical and gas;

(D) Road access; and

(E) Environmental monitoring equipment; and

(4) The construction and renovation of publicly owned industrial buildings.

History.
Acts 1981, ch. 453, § 4.

4-31-305. Loans — Maximum amount.

In order to ensure that as many communities as possible benefit from the program, individual loans shall not exceed two hundred fifty thousand dollars ($250,000).

History.
Acts 1981, ch. 453, § 5.

4-31-306. Rules for administration.

The state funding board, in consultation with the Tennessee local development authority and the commissioner of economic and community development, is authorized to promulgate such rules as it deems necessary for the orderly and efficient administration of this part.

History.
Acts 1981, ch. 453, § 6.

4-31-307. Loans — Applications.

(a) Counties or municipalities meeting the requirements of § 4-31-303 are authorized to make application to the commissioner of economic and community development for a loan pursuant to this part.

(b)(1) The commissioner shall review the application.

(2) If, after making such review, the commissioner determines that the applicant is eligible under this part, and the rules promulgated by the state funding board pursuant thereto, the commissioner is authorized to present such application to the state funding board with a request to approve a loan pursuant to this part, and the rules of the state funding board promulgated pursuant thereto.

History.
Acts 1981, ch. 453, § 7.

4-31-308. Loans — Approval — Fund allocation.

The state funding board, in consultation with the authority, is authorized to approve such loan and allocate such funds as may be necessary to meet the requirements stipulated in such loan from moneys appropriated and legally available for such purpose.

History.
Acts 1981, ch. 453, § 8.

PART 4

TENNESSEE LOCAL DEVELOPMENT AUTHORITY CAPITAL PROJECTS LOAN ACT OF 1990

4-31-401. Short title.

This part shall be known and may be cited as the "Tennessee Local Development Authority Capital Projects Loan Act of 1990."

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 6.

4-31-402. Legislative intent.

(a) The general assembly finds and declares that:

(1) Financing costs incurred by local governments in connection with capital projects are a significant factor in the ability of the local governments to meet the needs of their communities; and

(2) To the extent that financing of capital projects can be accomplished less expensively through the pooling together of needs and the use of less costly borrowing techniques, local governments would be better able to provide capital projects, and other essential services for the benefit of their citizens and taxpayers.

(b)(1) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority be empowered

to issue its revenue bonds and to make the proceeds available for loans to local government units for capital projects, at a cost that is lower than would otherwise be readily obtainable.

(2) It is intended that the Tennessee local development authority be vested with all powers necessary to accomplish these purposes.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 7.

4-31-403. "Construction" defined.

As used in this part, unless the context otherwise requires, "construction" means the building, reconstruction, creation, replacement, extension, repairing, betterment, improvement, alteration, equipment, extension or acquisition of capital projects, including, but not limited to, the acquisition of land and of rights in land, the engineering, architectural designs, plans, working drawings, specifications, procedures and other action necessary in the construction of such capital projects, and the inspection and supervision of such capital projects.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 8.

4-31-404. Loans for capital projects authorized for local government units receiving state-shared taxes — Schedule of payments.

(a) In addition to the powers otherwise granted by law, the authority has the power and is authorized to make loans to any local government unit for the construction of capital projects pursuant to a loan program agreement between the local government and the authority. Such loans shall be made from the proceeds of bonds or notes issued by the authority for the purpose of making such loans.

(b) Only local government units receiving state-shared taxes shall be eligible to participate in the loan program; provided, that a local government unit receiving state-shared taxes may jointly enter into a loan agreement with the authority and loan the proceeds of such loan to a local government unit not receiving state-shared taxes.

(c)(1)(A) The authority shall establish a repayment schedule to be made by a local government unit under a loan agreement.

(B) Such repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to local government units for the construction of capital projects, and as may be necessary for the authority to maintain a reserve for debt service.

(C) At the time of approval of a loan agreement, the annual repayment schedule applicable to all approved loans to a local government unit under provisions of this part, when combined with annual repayment schedules applicable to approved loans to local government units under title 68, chapter 221, parts 2 and 5, and [former] title 68, chapter 211, part 4

[repealed] or other state loan programs, shall not exceed one hundred percent (100%) of the unobligated amount of annual state-shared taxes paid to the local government unit as shown by the latest completed audit for the state's fiscal year.

(D) Nothing contained in this subsection (c) shall require a uniform test for all loans, it being the intent of the general assembly that the authority exercise discretion based on the facts and circumstances of each loan.

(E) In exercising its discretion, the authority shall take into consideration the general financial condition of the local government unit receiving the loan.

(2) For purposes of determining compliance with this subsection (c), the annual repayment schedule for each loan shall be, in cases prior to the funding of such loans or where such loans have been financed on an interim basis other than by bonds, an estimated annual repayment schedule showing debt service requirements under the loan agreements as if the bonds to be issued to fund such loans will bear interest at a rate per annum and mature in such manner as the authority shall establish at the time of the approval of each such loan and, in cases where bonds have been issued to fund such loan, the actual debt service requirements on such bonds.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 9.

Compiler's Notes.
Title 68, chapter 211, part 4, referred to in this section and concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

4-31-405. Administration of loans.

(a) The authority shall administer loans made under this part. In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part, including the promulgation of prerequisites that must be fulfilled by the local government unit in order to be eligible for a loan, procedures to be followed in making loan applications to the authority, procedures to be followed in the disbursement of loan funds, and procedures for enforcing agreements entered into by local government units with the authority.

(b) Any one (1) or more local government units entering into a loan agreement with the authority must state in the loan application, in addition to any requirements established by the authority, if the capital project is a correctional facility, that:

(1) The plans for the construction of such correctional facility have been submitted to the Tennessee corrections institute for review and comment; and

(2) The plans for construction of such correctional facility conform to standards established by the Tennessee corrections institute pursuant to § 41-4-140 and title 41, chapter 7, and the Life and Safety Code, as adopted by regulation of the department of commerce and insurance.

(c) Prior to being placed into use, any project that is a correctional facility financed by the loan agreement must first be inspected, approved and certified by the Tennessee corrections institute pursuant to § 41-4-140 and title 41,

chapter 7. Certification must be submitted to the authority within thirty (30) days of receipt by the local government unit.

(d) If the capital project is a qualified energy conservation project, the local government unit shall first apply to the department of environment and conservation. Any loan agreement for such qualified energy conservation project must be recommended by the commissioner of that department.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 10; 2012, ch. 957, § 3; 2016, ch. 743, § 14.

4-31-406. Loan agreements.

(a) Subject to § 4-31-405 and subject to any existing contractual obligations of the local government, the authority may enter into loan agreements with any local government unit and any local government unit may enter into loan agreements with the authority for loans for capital projects described in this part.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the local government subject to § 4-31-405 and shall additionally include, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the project to be constructed, as determined by the authority;

(2) An agreement by the authority to pay part of the amount of the loan to the local government unit during the progress of the construction, or to pay the amount of the loan following completion of the construction, as may be agreed upon by the parties; and

(3) An agreement by the local government unit to:

(A) Proceed expeditiously with, and complete, the project in accordance with the plans approved pursuant to this part;

(B) Commence operation of the project on its completion, and not to discontinue operations or dispose of the project without the approval of the authority;

(C) Operate and maintain the project in accordance with applicable provisions of this part and in compliance with rules and regulations of the authority;

(D) Not contract with any corporation for profit, private person or firm for the operation of the same, notwithstanding any law authorizing such contracts, except upon approval by the authority of an application to the authority, which application shall include, but not be limited to, an opinion from a nationally recognized bond counsel that the contract will not affect the tax exempt status of the income of the authority's bonds or notes financing such facility under state or federal law;

(E) To pledge any available sources of revenue to make payment according to a schedule established by the authority, including state-shared taxes and to make such payments; and

(F) To establish and maintain adequate financial records for the project, and to cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally ac-

cepted government auditing standards, and to furnish a copy of such audits to the comptroller of the treasury.

(c) Failure of a local government unit to file the audit required by subdivision (b)(3)(F) with the comptroller of the treasury each year until the loan, together with interest, is totally repaid constitutes a Class A misdemeanor and anyone violating this provision, upon conviction, shall be liable for a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each violation, within discretion of the court, and each day of continued violation constitutes a separate offense.

(d) The authority may promulgate any additional rules or regulations concerning the contract and change in operations of a capital project.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, §§ 11-15.

Cross-References.
Penalty for Class A misdemeanor, 40-35-111.

4-31-407. Further agreements and guarantees.

The authority has the right to enter into such further agreements with a local government unit and require such further guarantees or securities as it may see fit prior to, or simultaneously with, the issuance of bonds or to refuse to issue bonds until such agreements or securities, in any form that the authority may elect, are agreed to or are obtained.

History.
Acts 1986, ch. 846, § 13.

4-31-408. Preparation and approval of agreements — Approval of funding — Payments subject to audit.

(a) The authority shall prepare, and the attorney general and reporter shall approve, a form of loan agreement to be used to evidence loans made to local government units pursuant to this part.

(b) All loan agreements entered into pursuant to this part shall be subject to approval by the commissioner of finance and administration as to funding.

(c) All payments made pursuant to loan agreements shall be made on vouchers approved by the authority, and such payments shall be subject to audit at any time.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 16.

4-31-409. Allocation of funds — Criteria.

In allocating loan funds to local government units, the authority shall give consideration to, and apply, the following standards and criteria:

(1) The need and desirability for capital projects; and

(2) The ability of the local government unit to secure borrowed money from other sources and costs thereof.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 17.

4-31-410. Tax levy to meet payments.

In the event the funds pledged shall be insufficient to meet the payments as established by the authority for its loan, the local government unit shall levy a tax on property sufficient to make such payments, which shall be in addition to all other taxes authorized or limited by law.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 18.

4-31-411. Failure to make payments — Withholding of shared revenues authorized.

(a) In the event any local government unit having entered into a loan agreement fails to remit funds in accordance with the annual repayment schedule established by the authority, the commissioner, within five (5) days of such failure, shall deliver by certified mail a written notice of such failure to the local government unit.

(b) In the event the local government unit, as the case may be, shall fail to remit the amount set forth in the notice within sixty (60) days of the receipt of the notice, the commissioner shall, without further authorization, withhold such sum or part of such sum from any state-shared taxes that are otherwise apportioned to such local government unit for the benefit of the authority issuing bonds or notes for the purposes referred to in this part.

History.
Acts 1986, ch. 846, § 13.

4-31-412. Enforcing of agreement by court action.

The authority has the right, in addition to all other rights, by mandamus or other suit, action or proceeding in any court of competent jurisdiction, to require the local government unit and the governing body and any proper officer, agent or employee of the local government unit to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant thereto.

History.
Acts 1986, ch. 846, § 13.

4-31-413. Debt limit not applicable.

Local government units may enter into loan agreements under this part notwithstanding and without regard to any limit on indebtedness provided by law.

History.
Acts 1986, ch. 846, § 13.

4-31-414. Actions of governing body by resolution.

All action required or authorized to be taken under this part by the governing body of any local government unit may be by resolution, which

resolution may be adopted at the meeting of the governing body at which such resolution is introduced, and shall take effect immediately upon its adoption.

History.
Acts 1986, ch. 846, § 13.

4-31-415. Provisions supplemental.

(a) This part shall be in addition and supplemental to any other law providing for the financing of capital projects by local government units and shall not be deemed to amend or repeal any other law.

(b) No proceedings by a local government unit shall be required for loan agreements hereunder, except as provided by this part, any law to the contrary notwithstanding.

(c) No other requirements or restrictions applicable to borrowing by a local government unit contained in any other law shall be applicable to loans under this part.

History.
Acts 1986, ch. 846, § 13; 1990, ch. 885, § 19.

PART 5

TENNESSEE LOCAL DEVELOPMENT AUTHORITY RURAL FIRE PROTECTION EQUIPMENT ACT OF 1986

4-31-501. Short title.

This part shall be known and may be cited as the "Tennessee Local Development Authority Rural Fire Protection Equipment Act of 1986."

History.
Acts 1986, ch. 846, § 14.

4-31-502. Intent.

It is in the interest and welfare of the people of Tennessee that the Tennessee local development authority be empowered to issue its revenue bonds, and to make the proceeds available for loans to counties for the purchase of equipment for the use of county or volunteer fire departments serving unincorporated areas of the county, in order to improve county and other rural fire protection, which will in turn result in improvements in fire ratings and a reduction in fire insurance premiums.

History.
Acts 1986, ch. 846, § 14.

4-31-503. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Equipment" means fire engines, ladders, hooks, hoses and all other equipment necessary for the containing and extinguishing of fires; and

(2) "Loan agreement" means a contractual arrangement by and between a county and the authority pursuant to and in accordance with this part.

History.
Acts 1986, ch. 846, § 14.

4-31-504. Loans for the purchase of equipment for the use of county or volunteer fire departments by counties receiving state-shared taxes — Schedule of payments.

(a) For the purpose of providing moneys to fund loans authorized by this part, the authority, in addition to the powers otherwise created by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in an amount not to exceed ten million dollars ($10,000,000) in accordance with the terms set forth in §§ 4-31-105, 4-31-106 and 4-31-107(d).

(b) Bonds or notes issued pursuant to this part shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provisions of this chapter or any other law; provided, that the foregoing shall not prohibit the issuance of separate issues of bonds or notes pursuant to this part.

(c) In addition to the powers otherwise granted by law, the authority has the power and is authorized to make loans to any county for the acquisition of equipment for the use of county or volunteer fire departments serving the unincorporated areas of a county pursuant to a loan agreement between the county and the authority. Such loans shall be made from the proceeds of bonds or notes issued by the authority for the purpose of making such loans.

(d)(1)(A) The authority shall establish a repayment schedule to be made by a county under a loan agreement.

(B) Such repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to counties for the purchase of equipment, and as may be necessary for the authority to maintain a reserve for debt service.

(C) The authority may collect an administrative fee in addition to such repayment schedule in an amount as may be set forth in the loan agreement.

(D) At the time of approval of a loan agreement, the annual repayment schedule applicable to all approved loans to a county under this part, when combined with the annual repayment schedules applicable to approved loans to counties under title 68, chapter 221, parts 2 and 5, [former] title 68, chapter 211, part 4 [repealed], or any other loan agreement entered into between the county and the authority pursuant to this chapter shall not exceed one hundred percent (100%) of the unobligated amount of annual state-shared taxes paid to the county as shown by the latest completed audit for the state's fiscal year.

(E) Nothing contained in this subsection (d) shall require a uniform test for all loans, it being the intent of the general assembly that the authority exercise discretion based on the facts and circumstances of each loan.

(F) In exercising its discretion, the authority shall take into consideration the general financial condition of the county receiving the loan.

(2) For purposes of determining compliance with this subsection (d), the annual repayment schedule for each loan shall be, in cases prior to the funding of such loans or where such loans have been financed on an interim basis other than by bonds, an estimated annual repayment schedule showing debt service requirements under the loan agreements as if the bonds to be issued to fund such loans will bear interest at a rate per annum and mature in such manner as the authority shall establish at the time of the approval of each such loan and, in cases where bonds have been issued to fund such loan, the actual debt service requirements on such bonds.

History.
Acts 1986, ch. 846, § 14.

Compiler's Notes.
Title 68, chapter 211, part 4, referred to in this section and concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

4-31-505. Administration of loans.

(a)(1) The authority shall administer loans made under this part.

(2) In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part, including the promulgation of prerequisites that must be fulfilled by the county in order to be eligible for a loan, procedures to be followed in making loan applications to the authority, procedures to be followed in the disbursement of loan funds, and procedures for enforcing agreements entered into by a county with the authority.

(b) Any county entering into a loan agreement with the authority must state in the loan application, in addition to any requirements established by the authority pursuant to rules and regulations, that the purchase of the equipment is reasonably calculated to result in a reduction of fire insurance premium rates for businesses and residents within the unincorporated area of the county served by the county or volunteer fire department.

History.
Acts 1986, ch. 846, § 14.

4-31-506. Loan agreements.

(a) Subject to § 4-31-505 and subject to any existing contractual obligations of the county, the authority may enter into loan agreements with any county, and any county may enter into loan agreements with the authority for loans for equipment for the use of county or volunteer fire departments serving the unincorporated area of the county.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the county, subject to § 4-31-505 and shall additionally include, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the equipment to be purchased, as determined by the authority; and

(2) An agreement by the local government unit to:

(A) Proceed expeditiously with the purchase in accordance with the loan agreement approved pursuant to this part;

(B) Not dispose of the equipment without the prior approval of the authority;

(C) Pledge any available sources of revenue to make payment according to the repayment schedule established by the authority, including state-shared taxes, and to make such payments; and

(D) Establish and maintain adequate financial records for the equipment, including maintaining an inventory, and cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of such audits to the comptroller of the treasury.

(c) Failure of a county to file the audit required by subdivision (b)(2)(D) with the comptroller of the treasury each year, until the loan, together with interest is totally repaid, constitutes a Class A misdemeanor and anyone violating this provision, upon conviction, shall be liable for a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each violation, within the discretion of the court, and each day of continued violation constitutes a separate offense.

History.
Acts 1986, ch. 846, § 14.

Cross-References.
Penalty for Class A misdemeanor, 40-35-111.

4-31-507. Further agreements and guarantees.

The authority has the right to enter into such further agreements with a county and require such further guarantees or securities as it may see fit prior to, or simultaneously with, the issuance of bonds or to refuse to issue bonds until such agreements or securities, in any form that the authority may elect, are agreed to or are obtained.

History.
Acts 1986, ch. 846, § 14.

4-31-508. Approval of agreements — Payments subject to audit.

All loan agreements entered into pursuant to this part shall be subject to approval by the attorney general and reporter as to the form and by the commissioner of finance and administration, and all payments made pursuant to such loan agreements shall be made on vouchers approved by the authority, and such payments shall be subject to audit at any time.

History.
Acts 1986, ch. 846, § 14.

4-31-509. Allocation of funds — Criteria.

In allocating loan funds to counties, the authority shall give consideration to, and apply, the following standards and criteria:

(1) The need and desirability for such equipment; and

(2) The ability of the county to secure borrowed money from other sources and costs thereof.

History.
Acts 1986, ch. 846, § 14.

4-31-510. Tax levy to meet payments.

In the event the funds pledged shall be insufficient to meet the payments as established by the authority, any county shall levy a tax on property sufficient to make such payments, which shall be in addition to all other taxes authorized or limited by law.

History.
Acts 1986, ch. 846, § 14.

4-31-511. Failure to make payments — Withholding of state-shared revenues authorized.

(a) In the event any county having entered into a loan agreement shall fail to remit funds in accordance with the annual repayment schedule established by the authority, the commissioner, within five (5) days of such failure, shall deliver by certified mail a written notice of such failure to the county.

(b) In the event the county shall fail to remit the amount set forth in the notice within sixty (60) days of the receipt of the notice, the commissioner shall, without further authorization, withhold such sum or part of such sum from any state-shared taxes that are otherwise apportioned to such county for the benefit of the authority issuing bonds or notes for the purposes referred to in this part.

(c) A county shall not have any claims on state-shared taxes withheld as permitted under the terms of this part.

History.
Acts 1986, ch. 846, § 14.

4-31-512. Authority to establish rural fire protection equipment fund — Disposition of funds.

(a) The authority is hereby authorized to establish in the state treasury a separate special trust fund of the authority for each separate issue of bonds or notes that is similarly secured, to be known as the "rural fire protection equipment fund," and to bear such additional designation as the authority deems appropriate to properly identify each fund.

(b)(1) The state hereby covenants and agrees that from and after the issuance of any bonds or notes under and pursuant to this part, moneys derived by the state from payments made pursuant to loan agreements with such counties and moneys withheld from state-shared taxes apportioned to such counties as permitted under the terms of the loan agreements that are pledged to the payment of such bonds or notes shall be paid into the particular fund established for the issuance of bonds or notes to which such moneys are pledged.

(2) Such moneys shall be accounted for separately from all other moneys in the state treasury and shall be applied by the authority solely for the purpose of paying principal of and interest and premium, if any, on such issue of bonds and notes issued pursuant to this section, refunding moneys

due to participating counties where appropriate, and paying all other costs incidental to the administration of the authority in connection with the loan agreements and the issuance of such issue of bonds and notes.

History.
Acts 1986, ch. 846, § 14.

4-31-513. Enforcing of agreement by court action.

The authority has the right, in addition to all other rights, by mandamus or other suit, action or proceeding in any court of competent jurisdiction, to require the county and the governing body and any proper officer, agent or employee of the county to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant thereto.

History.
Acts 1986, ch. 846, § 14.

4-31-514. Debt limit not applicable.

Any county may enter into loan agreements under this part notwithstanding and without regard to any limit on indebtedness provided by law.

History.
Acts 1986, ch. 846, § 14.

4-31-515. Actions of governing body by resolution.

All action required or authorized to be taken under this part by the governing body of any county may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon its adoption.

History.
Acts 1986, ch. 846, § 14.

4-31-516. Provisions supplemental.

(a) This part shall be in addition and supplemental to any other law providing for the financing of the purchase of equipment by counties and shall not be deemed to amend or repeal any other law.

(b) No proceedings by a county shall be required for loan agreements hereunder, except as provided by this part, any law to the contrary notwithstanding.

(c) No other requirements or restrictions applicable to borrowing by any county contained in any other law shall be applicable to loans under this part.

History.
Acts 1986, ch. 846, § 14.

PART 6

TLDA AIRPORT LOAN ACT OF 1988

4-31-601. Short title.

This part shall be known and may be cited as the "TLDA Airport Loan Act of 1988."

History.
Acts 1988, ch. 820, § 1.

4-31-602. Legislative intent.

(a) The general assembly finds and declares that:

(1) The construction of safety improvements for airports is an essential function of airport authorities, municipal airports, and state and local governments;

(2) The construction of projects for airport improvements, for the mitigation of noise created by activity of an airport, for the acquisition of property and rights in property, real and personal, relating thereto, and the financing of such, are essential functions of airport authorities, municipal airports, and state and local governments; and

(3) To the extent that financing of improvements, safety improvements and noise mitigation for airport authorities and municipal airports can be accomplished through the pooling of needs and the use of less costly borrowing techniques, airport authorities, municipal airports and local governments would be better able to provide improvements, safety improvements and noise mitigation for the benefit of citizens.

(b)(1) It is accordingly in furtherance of the interest and welfare of all Tennesseans that the Tennessee local development authority be empowered to issue its revenue bonds and to make proceeds available for loans to airport authorities and municipal airports for improvements, safety improvements and noise mitigation projects at a cost lower than would otherwise be obtainable.

(2) It is intended that the Tennessee local development authority be vested with all powers necessary to accomplish these purposes.

History.
Acts 1988, ch. 820, § 1.

4-31-603. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Airport" means and includes any one (1) or more airports or heliports and related facilities of an airport authority or municipal airport, including, but not limited to, land and interests in land, facilities for storage of air and space craft, navigation and landing aids, taxiways, pads, aprons, control towers, passenger and cargo terminal buildings, hangars, administration and office buildings, garages, parking lots, and such other structures,

facilities and improvements necessary or convenient to the development and maintenance of airports and heliports, and for the promotion and accommodation of air and space travel, commerce and navigation;

(2) "Airport authority" means those airport authorities created pursuant to title 42, chapter 3 and those metropolitan airport authorities created pursuant to title 42, chapter 4;

(3) "Construction" means the building, reconstruction, creation, replacement, extension, repair, betterment, improvement, installation, alteration, equipping, extension, development, acquisition by gift, lease, purchase, or the exercise of the right of eminent domain, or any one (1) or more of the foregoing, including the acquisition of property and rights in property, real and personal;

(4) "Loan agreement" means a contractual arrangement by and between an airport authority or a municipal airport and the authority and, in the discretion of the authority, the creating or participating municipality providing the guaranty, pursuant to and in accordance with this part;

(5) "Municipal airport" means those county or municipal airports created pursuant to title 42, chapter 5; and

(6) "Project" means any one (1) or any combination of the following: safety improvements for airports; mitigation of noise created by activity of an airport, including the acquisition of property and rights in property, real and personal, related thereto; and for any purpose for which bonds or notes can be issued pursuant to the Metropolitan Airport Authority Act, compiled in title 42, chapter 4.

History.
Acts 1988, ch. 820, § 1; 1989, ch. 233, § 4.

4-31-604. Financing of projects for use of airport authorities and municipal airports — Schedule of payments.

(a) For the purpose of providing moneys to fund loans authorized by this part, the authority, in addition to the powers otherwise created by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in an amount not to exceed two hundred million dollars ($200,000,000) in accordance with the terms of this part.

(b) Bonds or notes issued pursuant to this part shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provisions of this chapter or any other law; provided, that the foregoing shall not prohibit the issuance of separate issues of bonds or notes pursuant to this part.

(c) In addition to the powers otherwise granted by law, the authority has the power and is authorized to make loans to any airport authority or municipal airport that has obtained the guaranty of a creating municipality or participating municipality pursuant to § 4-31-607, for the financing of projects for airport authorities or municipal airports pursuant to a loan agreement. Such loans shall be made from the proceeds of bonds or notes issued by the authority for the purpose of making such loans.

(d)(1) The authority shall establish a repayment schedule to be made by an airport authority or municipal airport under a loan agreement. Such

repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to airport authorities or municipal airports for the financing of projects, and as may be necessary for the authority to maintain a reserve for debt service. The authority may collect an administrative fee in addition to such repayment schedule in an amount as may be set forth in the loan agreement.

(2) The annual repayment schedule for each loan shall be, in cases prior to the funding of such loans or where such loans have been financed on an interim basis other than by bonds, an estimated annual repayment schedule showing debt service requirements under the loan agreement as if the bonds to be issued to fund such loans will bear interest at a rate per annum and mature in such manner as the authority shall establish at the time of the approval of each such loan and, in cases where bonds have been issued to fund such loan, the actual debt service requirements on such bonds.

History.
Acts 1988, ch. 820, § 1.

4-31-605. Administration of loans.

(a) The authority shall administer loans made under this part.

(b) In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part, including the promulgation of prerequisites that must be fulfilled by an airport authority or municipal airport in order to be eligible for a loan, procedures to be followed in making loan applications to the authority, procedures to be followed in the disbursement of loan funds, and procedures for enforcing loan agreements entered into by an airport authority or municipal airport with the authority.

History.
Acts 1988, ch. 820, § 1.

4-31-606. Loan agreements.

(a) Subject to § 4-31-605 and subject to any existing contractual obligations of the airport authority or municipal airport, the authority may enter into a loan agreement with any airport authority or municipal airport, and any airport authority or municipal airport may enter into a loan agreement with the authority, for loans for financing projects, if such repayment under such loan agreement is guaranteed or secured by a creating municipality or participating municipality as set forth in § 4-31-607.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the airport authority or municipal airport, subject to § 4-31-605 and shall additionally include, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the project to be financed, as determined by the authority; and

(2) An agreement by the airport authority or municipal airport to:

(A) Proceed expeditiously with, and complete, the project in accordance with the loan agreement approved pursuant to this part;

(B) Not dispose of the project without the prior approval of the authority during the term of the loan agreement;

(C) Pledge any available sources of revenues, income and charges, including grants and contributions from the federal government or other sources, make payments according to the repayment schedule established by the authority and make such payments; and

(D) Establish and maintain adequate financial records for the project, including maintaining an inventory, cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards, and furnish a copy of such audits to the comptroller of the treasury.

(c) Failure of an airport authority or municipal airport to file the audit required by subdivision (b)(2)(D) with the comptroller of the treasury each year, until the loan, together with interest, is totally repaid, constitutes a Class A misdemeanor, and anyone violating this provision, upon conviction, shall be liable for a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each violation, and each day of continued violation constitutes a separate offense.

History.
Acts 1988, ch. 820, § 1.

Cross-References.
Penalty for Class A misdemeanor, 40-35-111.

4-31-607. Guarantees by municipality of loan agreement.

(a) Any creating municipality or participating municipality under title 42, chapters 3-5 is hereby authorized pursuant to resolution adopted by the governing body of any such creating or participating municipality to guarantee or in any other manner to secure the payment of the airport authority or municipal airport under the loan agreement. Such guarantee shall include the pledge of unobligated state-shared taxes of the creating or participating municipality to the repayment of the loan agreement of the airport authority or municipal airport; provided, that at the time of approval of a loan agreement, the annual repayment schedule applicable to all approved loans to an airport authority or municipal airport so guaranteed by a creating or participating municipality to which unobligated state-shared taxes are pledged, when combined with annual repayment schedules applicable to approved loans to the creating or participating municipality under parts 4 and 5 of this chapter, title 68, chapter 221, parts 2 and 5, and [former] title 68, chapter 211, part 4 [repealed] or other state loan programs, shall not exceed one hundred percent (100%) of the unobligated amount of annual state-shared taxes paid to the creating or participating municipality as shown by the latest completed audit for the state's fiscal year.

(1) In the event the funds pledged by an airport authority or municipal airport shall be insufficient to meet the payments as established by the authority, any creating or participating municipality guaranteeing such loan agreement shall levy a tax on property sufficient to make such payments, which shall be in addition to all other taxes authorized or limited by law.

(2) In the event any airport authority or municipal airport having entered into a loan agreement shall fail to remit funds in accordance with the annual repayment schedule established by the authority, the commissioner of

finance and administration shall deliver by certified mail a written notice of such failure to the airport authority or municipal airport and to the creating or participating municipality guaranteeing such loan agreement, within five (5) days of such failure.

(3) In the event the airport authority or municipal airport and the creating or participating municipality guaranteeing such loan agreement shall fail to remit the amount set forth in the notice within sixty (60) days of the receipt of the notice, the commissioner shall, without further authorization, withhold such sum or part of such sum from any state-shared taxes that are otherwise apportioned to such creating or participating municipality for the benefit of the authority issuing bonds or notes for the purposes referred to in this part. The creating or participating municipality shall not have any claim on state-shared taxes withheld as permitted under this part.

(b) The county mayor, the county clerk, or the mayor and the city recorder for any creating or participating municipality, are authorized and directed upon adoption of such resolution to execute all documents necessary to guarantee or in any other manner to secure the payment of the airport authority or municipal airport under the loan agreement.

(c)(1) Prior to any meeting where such authorization will be considered by the governing body of a creating or participating municipality, a notice shall be published at least five (5) days in advance of such meeting in a newspaper of general circulation within the creating or participating municipality describing the matter to be considered and containing an estimate of the dollar amount of any contingent liability proposed to be undertaken by the creating or participating municipality.

(2) The resolution of such creating or participating municipality authorized to be taken under this part may be adopted at the meeting of the governing body of such municipality at which such resolution is introduced and shall take effect immediately upon its adoption.

History.

Acts 1988, ch. 820, § 1; 1989, ch. 233, §§ 5, 6; 2003, ch. 90, § 2.

Compiler's Notes.

Acts 1989, ch. 233, § 59 provided that the amendment by that act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before May 3, 1989. Section 60 provided that the provisions of Acts 1989, ch. 233 are declared to be remedial in nature and all provisions of that act shall be liberally construed to effectuate its purposes.

Title 68, chapter 211, part 4, referred to in this section and concerning resource and energy recovery, was repealed by Acts 1996, ch. 846, § 48, effective July 1, 1996.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

4-31-608. Further agreements and guarantees with authority.

The authority has the right to enter into such further agreements with an airport authority or municipal airport and require such further guarantees or securities as it may see fit prior to, or simultaneously with, the issuance of bonds or notes or to refuse to issue bonds or notes until such agreements or securities, in any form that the authority may elect, are agreed to or are obtained.

History.
Acts 1988, ch. 820, § 1.

4-31-609. Approval of agreements — Audits.

All loan agreements entered into pursuant to this part shall be subject to approval by the attorney general and reporter as to the form and by the commissioner of finance and administration, and all payments made pursuant to such loan agreement shall be as to funding approved by the authority, and such payments shall be subject to audit at any time.

History.
Acts 1988, ch. 820, § 1.

4-31-610. Bonds and notes — Issuance and terms — Security — Defaults.

(a)(1) The bonds and notes for any project shall be authorized by resolution of the authority, may be in one (1) or more series, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof, not exceeding eight (8) years from the date of issue of such original note, and in the case of any such bond not exceeding thirty (30) years from the date of issue, as such resolution or resolutions may provide.

(2) The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide.

(3) The bonds and notes may be sold at public or private sale, at such price or prices as the authority may provide.

(b) Any resolution or resolutions authorizing any bonds or notes, or any series thereof, may contain the following provisions, which shall be a part of the contract with the holders thereof:

(1) Pledging all or any part of the moneys that the authority is permitted by law to pledge, and securing the payment of the bonds or notes or of any series thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) Creating and establishing such funds and accounts as may be deemed necessary or advisable and setting aside reserves or sinking funds and agreeing as to the maintenance, regulation and disposition thereof;

(3) Limiting the purpose to which the proceeds of sale of bonds or notes may be applied, and pledging such proceeds to secure the payment of the bonds or notes or of any series thereof;

(4) Limiting the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(5) Prescribing the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner

in which such consent may be given;

(6) Investing in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 4-31-106 and limiting or abrogating the right of the bondholders or to appoint a trustee or limiting the rights, powers and duties of such trustee; and

(7) Setting forth any other matters, of like or different character, that in any way affect the security or protection of the bonds or notes.

(c)(1) The authority, subject to such agreements with bondholders or noteholders as may then exist, shall have power to purchase notes or bonds out of any moneys available therefor at a price not exceeding:

(A) The redemption price then applicable, plus accrued interest to the next interest payment date thereon, if the notes or bonds are then redeemable; or

(B) The redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption, plus accrued interest to such date if the notes or bonds are not then redeemable.

(2) All bonds and notes so purchased shall be cancelled.

(d) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(e) In the event any member of the authority whose signature or facsimile signature thereof shall appear on any bonds or coupons shall cease to be a member of the authority before the delivery thereof, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes, the same as if such member had remained a member of the authority until after such delivery.

(f)(1) Any pledge made by the authority pursuant to this chapter shall be valid and binding from the time when the pledge is made, the moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(g)(1) The bonds and notes shall not be invalid for any irregularity or defect in the proceedings for the issuance or sale thereof.

(2) Such bonds and notes shall contain a recital that they have been authorized and issued pursuant to the laws of the state, including particularly this chapter, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(3) Bonds and notes of the authority shall not constitute a debt or a pledge of the faith and credit of the state, any local governmental unit, creating or participating municipality, airport authority or municipal airport, and the

holders or owners of such bonds and notes shall have no right to have taxes levied by the general assembly or any local governmental unit, creating or participating municipality or any other taxing authority within the state for the payment of the principal of, premium, if any, and interest on, such bonds and notes, but such bonds and notes shall be payable solely from the revenues and moneys pledged for their payment.

(4) All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as the case may be, are not a debt of the state, any local governmental unit, creating or participating municipality, any other taxing authority, or any airport authority or municipal airport within the state, but are payable solely from revenues and moneys pledged to the payment thereof.

(h)(1) The authority has the power, and is hereby authorized, to issue from time to time renewal notes, and bonds to pay notes issued in anticipation of such bonds, and, whenever it deems refunding expedient, to refund any bonds by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose.

(2) Such refunding bonds and renewal notes may be issued without further authorization, such issuance being deemed authorized by the law authorizing the bonds and notes to be renewed, paid or refunded.

(3) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(i) Except as may otherwise be expressly provided by the authority, each issue of its notes or bonds issued pursuant to this section shall be limited special obligations of the authority, payable solely from and secured solely by moneys derived by the authority from all or a portion of payments made by an airport authority or municipal airport pursuant to the loan agreement with such airport authority or municipal airport as permitted under the state loan programs, as provided in the resolution authorizing such bonds and notes.

(j) In the event the authority shall default in the payment of principal of or interest and premium, if any, on the bonds or notes, the determination of such default and the remedies therefor shall be governed by § 4-31-106.

History.
Acts 1988, ch. 820, § 1.

4-31-611. Airport authority fund.

(a) The authority is hereby authorized to establish in the state treasury a separate special trust fund of the authority for each separate issue of bonds or notes that is similarly secured to be known as the "airport authority fund," and to bear such additional designation as the authority deems appropriate to properly identify each fund.

(b)(1) The state hereby covenants and agrees that from and after the issuance of any bonds or notes under and pursuant to this part, moneys derived by the state from payments made pursuant to loan agreements with such airport authorities or municipal airports as permitted under the terms

of the loan agreements that are pledged to the payment of such bonds or notes shall be paid into the particular fund established for the issuance of bonds or notes to which such moneys are pledged.

(2) Such moneys shall be accounted for separately from all other moneys in the state treasury and shall be applied by the authority solely for the purpose of paying principal of and interest and premium, if any, on such issue of bonds and notes issued pursuant to this section, refunding moneys due to participating airport authorities or municipal airports where appropriate, and paying all other costs incidental to the administration of the authority in connection with the loan agreements and the issuance of such issue of bonds and notes.

History.
Acts 1988, ch. 820, § 1.

4-31-612. Enforcement of agreements.

The authority has the right, in addition to all other rights, by mandamus or other suit, action or proceeding in any court of competent jurisdiction, to require the airport authority or municipal airport and the governing body and any proper officer, agent or employee of the airport authority or municipal airport to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant thereto.

History.
Acts 1988, ch. 820, § 1.

4-31-613. Debt limit not applicable.

Any airport authority or municipal airport may enter into loan agreements under this part, notwithstanding and without regard to any limit on indebtedness provided by law.

History.
Acts 1988, ch. 820, § 1.

4-31-614. Actions of governing body.

All action required or authorized to be taken under this part by the governing body of any airport authority or municipal airport may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon its adoption.

History.
Acts 1988, ch. 820, § 1.

4-31-615. Provisions supplemental.

(a) This part shall be in addition and supplemental to any other law providing for financing by airport authorities or municipal airports and shall not be deemed to amend or repeal any other law.

(b) No proceedings by an airport authority or municipal airport shall be required for loan agreements hereunder, except as provided by this part, any law to the contrary notwithstanding.

(c) No other requirements or restrictions applicable to borrowing by any airport authority or municipal airport contained in any other law shall be applicable to loans under this part.

History.
Acts 1988, ch. 820, § 1.

PART 7

TENNESSEE LOCAL DEVELOPMENT AUTHORITY MENTAL HEALTH AND MENTAL RETARDATION FACILITIES ACT OF 1990

4-31-701. Short title.

This part shall be known and may be cited as the "Tennessee Local Development Authority Mental Health and Mental Retardation Facilities Act of 1990."

History.
Acts 1990, ch. 975, § 1.

4-31-702. Legislative intent.

(a) The general assembly finds and declares that the provision of care, rehabilitation and treatment for mental illness, intellectual and developmental disabilities, or alcohol or drug abuse or dependency is a public purpose.

(b) The general assembly further finds and declares that, to the extent that financing the construction of facilities used in connection with the provision of mental health, intellectual and developmental disabilities, and alcohol and drug programs and services can be accomplished less expensively through the pooling together of needs and the use of less costly borrowing techniques, providers of such programs and services would be better able to construct these facilities and to provide essential programs and services for the benefit of the citizens of the state.

(c) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority be empowered to issue its revenue bonds and to make the proceeds available for loans to mental health, intellectual and developmental disabilities, and alcohol and drug facilities for capital projects, at interest rates lower than would otherwise be obtainable from private industry.

(d) It is intended that the Tennessee local development authority be vested with all powers necessary to accomplish these purposes.

History.
Acts 1990, ch. 975, § 1; 2011, ch. 158, § 3.

4-31-703. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of mental health and substance abuse services when referenced in provisions relating to mental health facilities or centers and means the commissioner of intellectual and developmental disabilities when referenced in provisions relating to intellectual and developmental disabilities facilities or centers;

(2) "Construction" means construction, acquisition, reconstruction, improvement, equipping, furnishing, bettering or extension of a facility, including paying engineering, fiscal, architectural and legal expenses incurred in connection therewith;

(3) "Department" means the department of mental health and substance abuse services when referenced in provisions relating to mental health facilities or centers and means the department of intellectual and developmental disabilities when referenced in provisions relating to developmental disabilities facilities or centers;

(4) "Facility" means "facility" as defined in § 33-2-402;

(5) "Grantee" means a nonprofit, 26 U.S.C. § 501(c)(3) corporation that is licensed under §§ 33-2-402 — 33-2-415 and §§ 68-11-201 — 68-11-250, that is under a grant contract with the department, and that has the primary purpose of delivering mental health, developmental disabilities or alcohol and drug services; and

(6) "Project" means the facility or portion of a facility, the construction of which is being financed or refinanced by a loan pursuant to this part.

History.

Acts 1990, ch. 975, § 1; 1993, ch. 234, § 29; 2000, ch. 947, §§ 6, 8M; 2009, ch. 186, § 1; 2010, ch. 1100, §§ 15, 16; 2012, ch. 575, §§ 1, 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-31-704. Issuance and sale of bonds and notes — Loans — Authorization.

(a) In addition to the powers otherwise granted by law, the authority has the power and is authorized to issue and sell bonds and notes, the proceeds of which may be used to make loans to any grantee for the construction or the refinancing of the construction of a facility pursuant to a loan agreement between the grantee, the department and the authority.

(b) Such loans shall be made from the proceeds of bonds or notes issued by the authority for the purpose of making such loans.

History.

Acts 1990, ch. 975, § 1.

4-31-705. Repayment of loans.

(a) The authority shall establish a repayment schedule to be made by a grantee under a loan agreement.

(b) Such repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, authority bonds and notes issued for the purpose of providing loans pursuant to this part and as may be necessary for the authority to maintain a reserve for debt service and to pay costs of administration.

History.
Acts 1990, ch. 975, § 1.

4-31-706. Issuance of bonds or notes — Limitations — Deficiency.

(a)(1) Bonds or notes issued pursuant to this part shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provision of this chapter or law.

(2) The authority shall not issue bonds and notes under this part in an aggregate principal amount at any one (1) time outstanding exceeding fifty million dollars ($50,000,000), excluding bonds or notes for the payment of redemption of which there has been or will be set aside and held in trust either moneys or direct and general obligations of, or obligations guaranteed by, the United States, or obligations secured by such obligations, or any combination thereof, that are or will be sufficient to pay when due the principal or applicable redemption price and all accrued interest thereon and, if such bonds or notes are to be redeemed, for which notice of redemption has been given or satisfactory provision has been made for the giving of such notice.

(b) Each issue of its notes or bonds issued pursuant to this part shall be limited special obligations of the authority payable solely from, and secured by amounts derived by, the authority from loans made pursuant to this part.

(c)(1) At the end of each calendar year, the authority shall certify to the governor and the commissioner the amount of deficiency, if any, in the debt service reserve account for bonds and notes issued pursuant to this part to mental health or developmental disabilities facilities.

(2) The commissioner shall transfer to the authority the amount of the deficiency from state funds appropriated to the department by the general assembly.

(d)(1) At the end of each calendar year the authority shall certify to the governor and the commissioner the amount of the deficiency, if any, in the debt service reserve account for bonds and notes issued pursuant to this part to alcohol and drug treatment facilities.

(2) The commissioner shall transfer to the authority the amount of the deficiency from state funds appropriated to the department by the general assembly.

(e) The authorization to issue additional bonds pursuant to this section is terminated. The authority and the department are authorized and directed to enter into a memorandum of understanding with the state funding board providing for the monitoring and servicing of all outstanding loan agreements

entered into under this part. Upon the issuance of debt by the state funding board, refunding and defeasing all outstanding authority debt previously issued pursuant to this part, the authority may transfer all payments received from grantees, as directed by the state funding board.

History.

Acts 1990, ch. 975, § 1; 1993, ch. 234, § 30; 1998, ch. 846, § 1; 2009, ch. 186, § 2; 2010, ch. 1100, § 17.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Attorney General Opinions.

Transfer of funds in event of deficiency in bond reserve account, OAG 91-95, 1991 Tenn. AG LEXIS 107 (11/27/91).

4-31-707. Administration of loans — Loan agreement — Security.

(a)(1) The authority shall administer loans made under this part.

(2) In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part.

(b) The loan agreements into which the authority enters with grantees may include such provisions as may be agreed upon by the authority and the grantees and shall include an agreement by the grantee to:

(1) Proceed expeditiously with, and complete, the project in accordance with the loan agreement;

(2) Pledge any available sources of revenues, income and charges and make payments according to the repayment schedule;

(3) Authorize the commissioner of finance and administration, in the event of a failure by the grantee to make a timely payment of amounts due under a loan agreement, to withhold grant funds pursuant to this part;

(4)(A) Establish and maintain adequate financial records for the project, including maintaining an inventory;

(B) Cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards; and

(C) Furnish a copy of such audits to the comptroller of the treasury;

(5) Prepare and submit a plan of operation as required by this part;

(6) Operate the project in accordance with law;

(7) Reapply for or renegotiate its grant with the department for so long as the loan with the authority is outstanding; and

(8) Not contract with any other entity, nonprofit corporation, corporation for profit, private person or firm for the operation of the facility without prior written permission of both the department and the authority.

(c) The authority has the right to enter into further agreements with a grantee and require such further guarantees or securities as it may see fit prior to, or simultaneously with, the issuance of bonds or to refuse to issue bonds until such agreements or securities, in any form that the authority may elect, are agreed to or are obtained.

(d) The loan agreement is subject to the approval by the attorney general and reporter as to form; each loan agreement is subject to approval by the

commissioner of finance and administration as to funding. All pay requests shall be on vouchers approved by the authority, and payments to grantees shall be subject to audit at any time.

(e) The authority shall require any type of security that it deems reasonable and necessary, including, but not limited to, a lien (deed of trust or mortgage) on the project; the authority shall be exempt from payment of indebtedness tax that would otherwise be due in connection with the perfection of the authority's lien.

History.
Acts 1990, ch. 975, § 1; 1995, ch. 30, § 2.

4-31-708. Notice of failure to remit funds — Withholding of funds.

(a) In the event any grantee having entered into a loan agreement shall fail to remit funds in accordance with the annual repayment schedule established by the authority, the commissioner of finance and administration shall deliver by certified mail or other means of verified delivery written notice of such failure to the grantee within five (5) business days of such failure.

(b) In the event the grantee shall fail to remit the amount set forth in the notice within ten (10) business days of the receipt of the notice, the commissioner shall, without further authorization, withhold such sum or part of such sum from any state grant funds that are otherwise available to such grantee for the benefit of the authority.

(c) A grantee shall have no claims to grant funds withheld as permitted under the terms of this part.

History.
Acts 1990, ch. 975, § 1.

4-31-709. Enforcement.

The authority has the right, in addition to all other rights, by appropriate suit, action or proceeding in any court of competent jurisdiction, to require the grantee, its governing body, or any proper officer, agent or employee to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant thereto.

History.
Acts 1990, ch. 975, § 1.

4-31-710. Certificate filed by commissioner.

(a) Prior to the issuance of bonds or notes pursuant to this part, the commissioner shall file with the authority a certificate to the effect that:

(1) The project to be financed from the proceeds of such bonds or notes constitutes a facility in accordance with § 33-2-402;

(2) Assisting the grantee in financing such project is in furtherance of the public purpose of the provision of mental health, intellectual disabilities, and alcohol and drug programs and services; and

(3) The costs of the project are reasonable and the revenues of the grantee

will be sufficient to cover the costs of operation and maintenance of the facility, including depreciation and debt service.

(b) Such certificate by the commissioner shall be conclusive evidence that the projects to be financed from the proceeds of such bonds or notes are facilities that may properly be financed from the proceeds of such bonds or notes; however, such certificate shall not constitute a guarantee of the success of the project or of the loan obligation of the grantee.

History.

Acts 1990, ch. 975, § 1; 1993, ch. 234, § 31; 2000, ch. 947, § 8M; 2009, ch. 186, § 3; 2010, ch. 1100, § 18.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4-31-711. Grantee's plan of operation.

(a) At least ninety (90) days prior to the beginning of each state fiscal year, the grantee shall submit a plan of operation for review and approval to the commissioners of mental health and substance abuse services, intellectual and developmental disabilities, health and finance and administration and the comptroller of the treasury. The plan of operation shall be in such form as may be required by the department and shall include, but not be limited to:

(1) A budget for operating and capital expenditures;

(2) Contracts for services;

(3) Appropriate policies and procedures adopted by the grantee to govern the expenditure of funds; and

(4) Other items as required by the department through rules and regulations.

(b) The plan of operation may be amended during a fiscal year with the written approval of the commissioners of mental health and substance abuse services, intellectual and developmental disabilities, health and finance and administration and the comptroller of the treasury.

History.

Acts 1990, ch. 975, § 1; 1993, ch. 234, § 32; 2010, ch. 1100, § 19; 2012, ch. 575, § 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 8

TENNESSEE INSURANCE GUARANTY ASSOCIATION BOND ACT OF 1995

4-31-801. Short Title.

This chapter shall be known and cited as the "Tennessee Insurance Guaranty Association Bond Act of 1995."

History.
Acts 1995, ch. 240, § 1.

4-31-802. Legislative findings and declarations.

The general assembly finds and declares that if a natural disaster, as defined herein, causes, in whole or in part, an insolvency resulting in covered claims in excess of the association's capacity to pay from the assessments under § 56-12-107(a)(3), it is proper to authorize the authority to issue bonds to expedite the handling and payment of covered claims against insolvent insurers operating in this state. It is determined to be in the best interest of and necessary for the protection of public health, safety, and general welfare of the residents of this state, and is hereby declared to be an essential public purpose to permit such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state, by expediting the handling and payment of covered claims.

History.
Acts 1995, ch. 240, § 1.

4-31-803. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Association" means the Tennessee insurance guaranty association;

(2) "Bonds" means all bonds, notes or other obligations issued by the authority under this part;

(3) "Claim" or "claims" means a covered claim as defined in § 56-12-104, to be paid from the issuance of bonds under this part in the event of insolvencies as described in § 56-12-107(b)(3); and

(4) "Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, ice storm, drought, fire, explosion, civil disturbance or other catastrophe that causes or may cause substantial damage or injury to property.

History.
Acts 1995, ch. 240, § 1.

4-31-804. Issuance of bonds — Limitations on bond amounts — Source of funds.

The authority may issue bonds in an amount not to exceed the ability of the

association to repay the bond indebtedness from assessments assessed pursuant to §§ 56-12-103(3) and 56-12-107(b)(3), with the proceeds of such bond issuance to fund a loan to the association in accordance with the provisions of the bond documents under which the bonds are issued, and the association shall expend such loan funds for the purpose of paying to claimants or policyholders covered claims, as such term is defined in § 4-31-803, arising through an insolvency. Any bonds issued by the authority under this section may all be payable from and secured by moneys received by or on behalf of the authority from assessments levied under § 56-12-107(b)(3), and assigned and pledged under § 56-12-107(b)(3), to or on behalf of the authority for the benefit of the holders of such bonds in connection with such assistance program. The funds, credit, property, and taxing power of the state shall not be pledged for the payment of such bonds.

History.
Acts 1995, ch. 240, § 1.

4-31-805. Review by commissioner of commerce and insurance.

Prior to the issuance of bonds to pay covered claims in the event of an insolvency, the commissioner of commerce and insurance shall recommend the amount of unpaid covered claims to be paid from the bond issuance. In making its recommendation, the commissioner shall review whether the amount of assessments proposed by the association could service repayment of the bond indebtedness and whether the insurers have the ability to pay the assessments to be levied.

History.
Acts 1995, ch. 240, § 1.

4-31-806. Negotiable bonds and notes.

For the purpose of providing moneys to fund loans authorized by this part, the authority, in addition to the powers otherwise created by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in accordance with the following terms:

(1) The authority shall establish a repayment schedule to be made under a loan agreement. The repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to the association for the payment of covered claims as defined in § 4-31-803 in the event of an insolvency, and as may be necessary for the authority to maintain a reserve for debt service. The authority may collect a reasonable administrative fee in addition to such repayment schedule in an amount as may be set forth in the loan agreement;

(2) The annual repayment schedule for each loan shall be, in cases prior to the funding of such loans or where such loans have been financed on an interim basis other than by bonds, an estimated annual repayment schedule showing debt service requirements under the loan agreement as if the bonds to be issued to fund such loans will bear interest at a rate per annum and mature in such manner as the authority shall establish at the time of the

approval of each such loan and, in cases where bonds have been issued to fund such loan, the actual debt service requirements on such bonds.

History.
Acts 1995, ch. 240, § 1.

4-31-807. Administration of loans.

(a) The authority shall administer loans made under this part.

(b) In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part, including the promulgation of prerequisites that must be fulfilled by the association in order to be eligible for a loan, procedures to be followed in making loan applications to the authority, procedures to be followed in the disbursement of loan funds, and procedures for enforcing loan agreements entered into by the association with the authority.

History.
Acts 1995, ch. 240, § 1.

4-31-808. Loan agreements.

(a) Any loan agreement may include such provisions as may be agreed upon by the authority and the association and shall include, in substance, the following:

(1) The amount of the loan as determined by the authority; and

(2) An agreement by the association to:

(A) Proceed expeditiously with and complete payment of the claims in accordance with the loan agreement approved pursuant to this part;

(B) Pledge any assessments and make payments according to the repayment schedule established by the authority; and

(C) Establish and maintain adequate financial records for the payment of claims, cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted accounting principles, and furnish a copy of such audits to the comptroller of the treasury.

(b) In addition to the foregoing, the authority shall administer loans made under this part only after it has determined that the association has the ability to repay the amount loaned.

History.
Acts 1995, ch. 240, § 1.

4-31-809. Approval of agreements — Audits.

All loan agreements entered into pursuant to this part shall be subject to approval by the attorney general and reporter as to form and by the commissioner of finance and administration; all payments made pursuant to such loan agreement shall be approved by the authority, as to funding. All payments made to the association under the loan agreements are to be requested on forms approved by the authority in amounts consistent with the loan amount, and such payments shall be subject to audit at any time.

History.
Acts 1995, ch. 240, § 1.

4-31-810. Requirements and procedure.

(a)(1) The bonds and notes for claims payment shall be authorized by resolution of the authority, may be in one (1) or more series, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof, not exceeding eight (8) years from the date of issue of such original note, and in the case of any such bond not exceeding thirty (30) years from the date of issue, as such resolution or resolutions may provide.

(2) The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide.

(3) The bonds and notes may be sold at public or private sale, at such price or prices as the authority may provide.

(b) Any resolution or resolutions authorizing any bonds or notes, or any series thereof, may contain the following provisions, which shall be a part of the contract with the holders thereof:

(1) Pledging all or any part of the moneys that the authority is permitted by law to pledge, and securing the payment of the bonds or notes or of any series thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) Creating and establishing such funds and accounts as may be deemed necessary or advisable and setting aside reserves or sinking funds and agreeing as to the maintenance, regulation and disposition thereof;

(3) Limiting the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(4) Prescribing the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(5) Investing in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 4-31-106, and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, powers and duties of such trustee; and

(6) Setting forth any other matters, of like or different character, that in any way affect the security or protection of the bonds or notes.

(c)(1) The authority, subject to such agreements with bondholders or noteholders as may then exist, shall have power to purchase bonds or notes out of any moneys available therefor at a price not exceeding the redemption price then applicable, plus accrued interest to the next interest payment date thereon, if the bonds or notes are then redeemable.

(2) All bonds and notes so purchased shall be cancelled.

(d) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(e) If any member of the authority whose signature or facsimile signature thereof shall appear on any bonds or coupons ceases to be a member of the authority before the delivery thereof, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes the same as if such member had remained a member of the authority until after such delivery.

(f)(1) Any pledge made by the authority pursuant to this chapter shall be valid and binding from the time when the pledge is made, the moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(g)(1) The bonds and notes shall not be invalid for any irregularity or defect in the proceedings for the issuance or sale thereof.

(2) Such bonds and notes shall contain a recital that they have been authorized and issued pursuant to the laws of the state, including particularly this chapter, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(3) Bonds and notes of the authority shall not constitute a debt or a pledge of the faith and credit of the state or a local governmental unit, and the holders or owners of such bonds and notes shall have no right to have taxes levied by the general assembly or any local governmental unit or any other taxing authority within the state for the payment of the principal of and interest and premium, if any, on such bonds and notes, but such bonds and notes shall be payable solely from the assessments pledged for their payment.

(4) All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes are not a debt of the state, any local governmental unit, creating or participating municipality, any other taxing authority, or any airport authority or municipal airport within the state, but are payable solely from revenues and moneys pledged to the payment thereof.

(h) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(i) Except as may otherwise be expressly provided by the authority, each issue of its bonds or notes issued pursuant to this section shall be limited special obligations of the authority, payable solely from and secured solely by moneys derived by the authority from all or a portion of payments made pursuant to the loan agreement with the association as provided in the resolution authorizing such bonds and notes.

(j) If the authority defaults in the payment of principal of and interest and

premium, if any, on the bonds or notes, the determination of such default and the remedies therefor shall be governed by § 4-31-106.

History.
Acts 1995, ch. 240, § 1.

4-31-811. Tennessee insurance guaranty association fund.

(a) The authority is hereby authorized to establish in the state treasury a special trust fund of the authority to be known as the "Tennessee insurance guaranty association fund."

(b)(1) The state hereby covenants and agrees that from and after the issuance of any bonds or notes under and pursuant to this part, moneys derived by the state from payments made pursuant to loan agreements with the association as permitted under the terms of the loan agreements that are pledged to the payment of such bonds or notes shall be paid into the particular fund established for the issuance of bonds or notes to which such moneys are pledged.

(2) Such moneys shall be accounted for separately from all other moneys in the treasury and shall be applied by the authority solely for the purpose of paying principal of and interest and premium, if any, on such issue of bonds and notes issued pursuant to this section, refunding moneys due to the association where appropriate, and paying all other costs incidental to the administration of the authority in connection with the loan agreements and the issuance of such issue of bonds and notes.

History.
Acts 1995, ch. 240, § 1.

4-31-812. Powers of the authority.

The authority has the right, in addition to all other rights, by mandamus or other suit, action or proceeding in any court of competent jurisdiction, to require the association and the board of directors and any proper officer, agent or employee of the association to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant thereto.

History.
Acts 1995, ch. 240, § 1.

4-31-813. Applicability.

(a) This part shall be in addition and supplemental to any other law providing for financing by the association and shall not be deemed to amend or repeal any other law.

(b) No proceedings by the association shall be required for loan agreements hereunder, except as provided by this part, any law to the contrary notwithstanding.

(c) Any requirements or restrictions applicable to borrowing by the association contained in any other law shall not be applicable to loans under this part.

History.
Acts 1995, ch. 240, § 1.

PART 9

TENNESSEE LOCAL DEVELOPMENT AUTHORITY LEAKING UNDERGROUND STORAGE FUNDING ACT OF 1997

4-31-901. Short title.

This part shall be known and may be cited as the "Tennessee Local Development Authority Leaking Underground Storage Funding Act of 1997."

History.
Acts 1997, ch. 444, § 2.

4-31-902. Legislative findings.

(a) The general assembly finds and declares that the costs incurred in connection with reasonable and safe cleanup with respect to petroleum sites within the state, as provided in title 68, chapter 215, part 1, are extensive and threaten the state's ability to meet its obligations with respect to the environment.

(b) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority, referred to in this part as the "authority," be empowered to issue revenue bonds and notes and to make the proceeds available to the petroleum underground storage tank board for purposes of providing for the reimbursement of reasonable and safe cleanup of petroleum sites.

(c) It is intended that the authority be vested with all powers necessary to accomplish these purposes.

History.
Acts 1997, ch. 444, § 2.

4-31-903. Bonds authorized.

(a) For the purpose of providing moneys for deposit with the petroleum underground storage tank board, the authority, in addition to the powers otherwise created by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in an amount not to exceed fifteen million dollars ($15,000,000) in accordance with the terms of this part.

(b) Bonds or notes issued pursuant to this part shall not be issued and sold as part of an issue of bonds or notes of the authority issued pursuant to any other provisions of this chapter or any other law; provided, that the foregoing shall not prohibit the issuance of separate issues of bonds or notes pursuant to this part.

(c) In addition to powers otherwise granted by law, the authority has the

power and is authorized to enter into a funding agreement with the petroleum underground storage tank board.

(d) The authority shall determine the amount as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority and to fund a debt service reserve fund. The authority may collect an administrative fee in addition to such schedule for repayment of debt. Such schedule for repayment of debt shall be provided to the commissioners of finance and administration, revenue and environment and conservation.

(e) Prior to the issuance of any debt, there shall be a determination by the authority as to the sufficiency of the tax collections to service such debt.

History.
Acts 1997, ch. 444, § 2.

4-31-904. Authorization by resolution — Payment.

(a) The bonds and notes shall be authorized by resolution of the authority, secured by the deposit of the assurance fee required under § 68-215-110, under such terms and conditions as deemed appropriate by the authority; provided, that such debt, including any renewals or extensions, shall not be outstanding longer than twenty (20) years or the useful life for the funded cleanup, whichever is shorter.

(b) Such bonds and notes of the authority shall not constitute a debt or a pledge of the faith and credit of the state, and the holders or owners of such bonds and notes shall have no right to have taxes levied by the general assembly, or any other taxing authority within the state for the payment of the principal, premium, if any, and interest on such bonds and notes, but such bonds and notes shall be payable solely from the revenues and moneys pledged for their payment.

History.
Acts 1997, ch. 444, § 2.

PART 10

TENNESSEE LOTTERY FUNDS FOR EDUCATION PROJECTS LOAN ACT OF 2003

4-31-1001. Short title.

This part shall be known and may be cited as the "Tennessee Lottery Funds for Education Projects Loan Act of 2003."

History.
Acts 2003, ch. 298, § 5.

Compiler's Notes.
Acts 2003, ch. 298, § 8 provided that: "The provisions of this act providing for postsecondary financial assistance from the net proceeds of the state lottery shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act."

Acts 2003, ch. 298, § 9 provided that: "Tennessee HOPE scholarships, Tennessee HOPE access grants, General Assembly Merit Scholarships, and supplemental awards under § 49-4-915, shall be awarded under the provisions of this act only to those eligible students who

graduate from a Tennessee high school, complete high school in a Tennessee home school program, or obtain a GED, after January 1, 2003, but prior to July 1, 2005, and who enroll in and attend an elgible postsecondary institution before January 1, 2006. Such students shall be eligible to receive such scholarships and grants in accordance with § 49-4-913 or § 49-4-920, as such provisions are applicable to the scholarship or grant the student is receiving."

Cross-References.

Law enforcement efforts, § 39-15-413.

Lotteries, Tenn. Const., art. XI, § 5.

Lotteries, chain letters and pyramid clubs, § 39-17-506.

Lottery not gambling, § 8-47-127.

Lottery sales, title 39, chapter 17, part 6.

Possession of gambling device or record, forfeiture, § 39-17-505.

State lottery proceeds, title 49, chapter 4, part 9.

Tennessee Education Lottery Corporation, §§ 4-51-132, 4-51-133.

Tennessee Education Lottery Implementation Law, title 4, chapter 51.

4-31-1002. Legislative intent.

(a) The general assembly finds and declares that:

(1) Financing costs incurred by local governments in connection with education projects are a significant factor in the ability of the local governments to meet the kindergarten through grade twelve (K-12) educational needs of their communities; and

(2) To the extent that financing of education projects can be accomplished less expensively through the pooling of needs and the use of less costly borrowing techniques, local governments would be better able to provide education projects, and other essential services for the benefit of their citizens and taxpayers.

(b)(1) It is accordingly in furtherance of the interests and welfare of all Tennesseans that the Tennessee local development authority shall be empowered and is authorized to issue its revenue bonds and to make the proceeds available for loans to local government units for capital projects for kindergarten through grade twelve (K-12) educational purposes.

(2) It is intended that the Tennessee local development authority be vested with all powers necessary to accomplish these purposes.

History.

Acts 2003, ch. 298, § 5.

4-31-1003. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Authority" means the Tennessee local development authority;

(2) "Construction" means the building, reconstruction, creation, replacement, extension, repairing, betterment, improvement, alteration, equipment, extension, or acquisition, including, but not limited to, the acquisition of land and of rights in land, the engineering, architectural designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of such capital projects, and the inspection and supervision of such capital projects;

(3) "Education project" means a capital outlay project for kindergarten through grade twelve (K-12) educational facilities; and

(4) "Local education agency" or "LEA" has the same meaning as defined in § 49-3-302.

History.
Acts 2003, ch. 298, § 5.

4-31-1004. Power and authority.

(a) In addition to the powers otherwise granted by law, the authority has the power and is authorized to make loans to any local government unit to finance the construction of education projects pursuant to a loan agreement between the local government unit and the authority. Such loans shall be made from the proceeds of bonds or notes issued by the authority pursuant to this chapter for the purpose of making such loans; provided, however, that the bonds and notes of the authority that may be outstanding at any time for such purpose shall not exceed seventy-five million dollars ($75,000,000). Such bonds or notes may be payable from or secured by the general shortfall reserve subaccount created by § 4-51-111 as the authority may provide in the indentures or resolutions authorizing and securing the authority's bonds and notes, which indentures and resolutions may include covenants with the holders of the bonds and notes with respect to the use, including limitations on such use, of such subaccount.

(b) Only local government units funding the local share of the basic education program for a local education agency shall be eligible to participate in the loan program.

History.
Acts 2003, ch. 298, § 5.

4-31-1005. Loan agreements.

(a) Subject to any existing contractual obligations of the local government unit and the local education agency, the authority may enter into loan agreements with any local government unit and any local government unit may enter into loan agreements with the authority for loans for education projects described in this part.

(b) Any loan agreement may include such provisions as may be agreed upon by the authority and the local government and shall additionally include, among other things, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the project to be constructed, the financing costs of the authority, the administrative costs of the authority, and the amount of any required reserves as determined by the authority;

(2) An agreement by the authority to pay part of the amount of the loan to the local government unit during the progress of the construction, or to pay the amount of the loan following completion of the construction, as may be agreed upon by the parties; and

(3) An agreement by the local government unit:

(A) To proceed expeditiously with and complete construction of the project in accordance with the plans approved pursuant to this part;

(B) To commence operation of the project on its completion, and not to discontinue operations, change the use of, or dispose of the project without the approval of the authority;

(C) To operate and maintain the project in accordance with applicable

provisions of this part and in compliance with rules and regulations of the authority;

(D) Not to contract with any for-profit-corporation, private person or firm for the operation or beneficial use of the for-profit-corporation, private person, or firm, notwithstanding any law authorizing such contracts, except upon approval by the authority of an application to the authority, which application shall include, but not be limited to, an opinion from a nationally recognized bond counsel that the contract will not affect the tax exempt status of the income of the authority's bonds or notes financing such facility under state or federal law;

(E) To pledge such sources of revenue including, but not limited to, the tax required by § 4-31-1006 to pay the principal of and interest on the loan and to make such payments as and when due in accordance with the loan agreement; and

(F) To establish and maintain adequate financial records for the project, and to cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of such audit and, upon request, such financial records to the comptroller of the treasury.

(c) The authority has the right to enter into such further agreements with a local government unit and require such further security as it may see fit prior to, or simultaneously with, the issuance of bonds or notes or to refuse to issue bonds or notes until such agreements or security, in any form that the authority may elect, are agreed to or are obtained.

(d) Failure of a local government unit to file the audit or, upon request, the financial information with the comptroller of the treasury as required by the loan agreement each year until the loan, together with interest, is totally repaid constitutes a Class A misdemeanor and anyone violating this subsection (d), upon conviction, shall be liable for a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each violation, within the discretion of the court, and each day of continued violation constitutes a separate offense.

(e) The department of education, in conjunction with the authority, shall develop an application and review procedure for loans under this program and shall make recommendations to the authority as to loan applications.

(f) The authority and the department shall have such other authority as may be necessary or appropriate for the exercise of the powers and duties conferred by this part.

(g) Each local education agency is authorized to pledge to the authority, for the further security of the authority's bonds and notes, the state share of the nonclassroom capital outlay portion of the local education agency's basic education program funds as set forth in the formula model established or revised by the state board of education and approved by the general assembly. These pledges may be required by the authority as a condition to making loans to local government units.

(h) The authority may promulgate additional guidelines, rules, or regulations in furtherance of the administration of this part.

History.
Acts 2003, ch. 298, § 5.

Cross-References.
Penalty for Class A misdemeanor, § 40-35-111.

4-31-1006. Levy and collection of tax to pay for loan.

(a) Whenever, and as often as, a local government unit enters into a loan agreement with the authority under this part, the governing body of such local government unit shall provide by resolution for the levy and collection of a tax upon all taxable property within the local government unit sufficient to pay when due all amounts payable under the loan agreement as and when such amounts become due and payable, including all fees and charges due the authority under such loan agreement and, furthermore, to pledge such tax and the full faith and credit of such local government unit to such payments; provided, however, that a special school district shall provide for the collection of such a tax upon the levy of the tax by the general assembly or shall pledge sufficient amounts from previously authorized taxes to cover all amounts due.

(b) The tax provided for in subsection (a) shall be assessed, levied, collected, and paid in like manner as other taxes of the local government unit, except as provided in subsection (a).

(c) The tax provided for in subsection (a) shall not be included within any statutory or other limitation of rate or amount for such local government, but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions, or requirements of any other law, whether public or private.

(d) There shall be set aside from the tax levy into a special fund an amount sufficient for the payment of the annual amount due under any such loan agreement and such additional amounts as may be required by the loan agreement for reserves. The money in such funds shall be used exclusively for such purposes and shall not be used for any other purpose until such annual amount has been paid in full or such reserve requirement has been fully satisfied.

History.
Acts 2003, ch. 298, § 5.

4-31-1007. Failure to remit funds.

(a) In the event any local government unit having entered into a loan agreement shall fail to remit funds in accordance with a loan agreement, the authority shall notify the commissioner of education who shall instruct the commissioner of finance and administration to deliver within five (5) days notice of such failure to the local government unit.

(b) In the event the local government unit shall fail to remit the amount set forth in the notice within thirty (30) days of the receipt of the notice, the commissioner of finance and administration shall, without further authorization, withhold such sum or part of such sum from the state share of the nonclassroom capital outlay portion of the basic education program fund that is otherwise apportioned to such local education agency and pledged to the

authority for the loan to such local government unit, for the benefit of the authority issuing bonds or notes for the purposes referred to in this part.

(c) In the event there are not sufficient funds in the state share of the nonclassroom capital outlay portion of the basic education program fund still held by the commissioner of finance and administration for the local education agency to cure the deficiency in repayments to the authority, the commissioner shall transfer to the authority funds equal to the amount of the remaining payment deficiency from the general shortfall reserve subaccount of the lottery for education account as established by § 4-51-111, subject to any limitations on the use of the subaccount established pursuant to § 4-31-1004(a). The commissioner of education shall instruct the commissioner of finance and administration to withhold from the state share of the nonclassroom capital outlay portion of subsequent basic education program funds apportioned to such local education agency an amount to replenish the general shortfall reserve subaccount of the lottery for education account equal to the amount transferred to the authority.

History.
Acts 2003, ch. 298, § 5.

4-31-1008. Rights of the authority.

The authority has the right, in addition to all other rights, by mandamus or other suit, action, or proceeding in any court of competent jurisdiction, to require the local government unit, the governing body, and any proper officer, agent, or employee of the local government unit to carry out any agreements and to perform its and their duties under this part or under any rule or regulation of the authority adopted pursuant to this part.

History.
Acts 2003, ch. 298, § 5.

4-31-1009. Limits on indebtedness.

Local government units may enter into loan agreements under this part notwithstanding and without regard to any limit on indebtedness provided by law.

History.
Acts 2003, ch. 298, § 5.

4-31-1010. Resolutions.

All action required or authorized to be taken under this part by the governing body of any local government unit may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced, and shall take effect immediately upon its adoption.

History.
Acts 2003, ch. 298, § 5.

4-31-1011. Provisions supplemental.

(a) This part shall be in addition to and supplemental to any other law providing for the financing of education projects by local government units.

(b) Notwithstanding any law to the contrary, no proceedings by a local government unit or local education agency shall be required for loan agreements hereunder, except as provided by this part.

(c) No requirements or restrictions applicable to borrowing by a local government unit contained in any other law shall be applicable to loans under this part.

History.
Acts 2003, ch. 298, § 5.

4-31-1012. Pledges.

(a) Any pledge made by the authority pursuant to this chapter, or by a local government unit pursuant to a loan program agreement, or by a local education agency in connection therewith shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the authority or local government unit, as applicable, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, local government units, or local education agency as applicable, irrespective of whether such parties have notice of those claims.

(b) Recording of the resolution or any other instrument by which a pledge is created is not required.

History.
Acts 2003, ch. 298, § 5.

PART 11

ENHANCEMENT PROGRAM FOR DEBT FINANCING OF CAPITAL PROJECTS

4-31-1101. Part definitions — Eligibility — Purposes — Application and review procedure.

(a) For the purposes of this part, the following definitions shall apply:

(1) "Authority", "construction", and "education project" as defined in § 4-31-1003;

(2) "Available local capital outlay funds" means, with respect to any LGU or LEA, the state share of the capital outlay portion of the nonclassroom component of the BEP funding as set forth in the formula model established or revised by the state board of education, or any replacement funding, approved by the general assembly from time to time, that the LGU or LEA is entitled to receive;

(3) "Basic education program" (BEP) and "local education agency" (LEA)

as defined in § 49-3-302;

(4) "Education debt" means debt issued, together with any debt issued to renew or refund the debt, by any LGU to finance the construction of education projects subject to an agreement entered into pursuant to this part;

(5) "Enhancement program" means the program established pursuant to this part; and

(6) "Local government unit" (LGU), as defined in § 4-31-102.

(b) Only LGUs funding the local share of the BEP for an LEA shall be eligible to participate in the program under this part.

(c) The authority, in conjunction with the department of education, is empowered and is authorized to develop an enhancement program under which legally available state funds and available local capital outlay funds assigned or pledged by the LGU or LEA may be applied to one (1) or more of the following purposes for education debt issued by LGUs:

(1) To pay the debt service on or to provide for the payment of debt service on such debt; or

(2) To provide reserves for such debt.

(d) The department of education, in conjunction with the authority, shall develop an application and review procedure for requests under this enhancement program. The department of education shall review each proposed education project and shall make recommendations to the authority as to the applications. The department shall monitor education projects during the term of the agreements required by § 4-31-1102.

History.
Acts 2005, ch. 211, § 1.

4-31-1102. Program provisions.

Any program established by the authority pursuant to this part may include such provisions as may be agreed upon by the parties and shall additionally include, among other things, in substance, the following:

(1) The structural requirements of the education debt issued by the LGU, including payment dates, maturity schedule, interest rates, and paying agent;

(2) The coverage requirement for the available local capital outlay funds, provided that the maximum annual debt service on the education debt can be no greater than the available local capital outlay funds in the prior fiscal year divided by 1.25;

(3) A description and estimated costs of the education project; and

(4) An agreement by the LGU and the LEA to:

(A) Proceed expeditiously with, and use its best efforts to complete, the education project;

(B) Commence operation of the education project as soon as possible after completion, and not to use the education project for any purpose not approved pursuant to this part, and not to discontinue operations or dispose of the education project without the prior approval of the authority and the department of education;

(C) Operate and maintain the project in accordance with applicable

provisions of this part and rules and regulations of the department of education;

(D) Assign or pledge available local capital outlay funds; and

(E) Cause to be made an annual audit of the financial records of the LEA each fiscal year in accordance with generally accepted government auditing standards, and to furnish a copy of each such audit to the comptroller of the treasury.

History.
Acts 2005, ch. 211, § 1.

4-31-1103. Assignment or pledge of local capital outlay funds as security — Procedures.

(a) Each LGU issuing education debt, as well as any LEA for which education debt is issued, are authorized to assign or pledge for the further security of the education debt the available local capital outlay funds, whether such debt is issued pursuant to title 9, chapter 21, or title 49, chapter 3, and to assign or pledge to the authority all right and interest in such funds to be used by the authority as permitted under this part.

(b) Upon the approval of an application, the authority shall notify the commissioner of finance and administration, indicating the identity of the participating LGU and LEA and the terms of the assignment or pledge. The authority shall submit a certified copy of the debt service schedule for the education debt to the commissioner of finance and administration. The commissioner of finance and administration shall be entitled to rely on such schedule or other submitted documentation, without any further review or investigation. Notwithstanding § 49-3-101(b), the commissioner shall withhold and pay such sum from the available local capital outlay funds to the authority pursuant to any assignment or pledge.

(c) Any earnings on such funds after receipt by the authority and prior to payment on the education debt shall accrue to the benefit of the authority.

(d) The lien of any assignment or pledge pursuant to this part shall be valid and binding as of the time it is made, and as against all parties having claims of any kind in tort, contract, or otherwise against the LGU, the LEA, or the authority, regardless of whether such parties have notice of those claims. Recording of the resolution or any other instrument by which the assignment or pledge is created is not required. This part and the agreement required by § 4-31-1102 shall in all respects govern the creation, perfection, priority and enforcement of such assignment or pledge, and title 47, chapter 9 shall not govern such matters.

History.
Acts 2005, ch. 211, § 1.

PART 12

TENNESSEE TRANSPORTATION STATE INFRASTRUCTURE FUND ACT

4-31-1201. Short title.

This part shall be known and may be cited as the "Tennessee Transportation State Infrastructure Fund Act."

History.
Acts 2009, ch. 525, § 1.

4-31-1202. Part definitions.

As used in this part:

(1) "Department of transportation" means the Tennessee department of transportation and its successors;

(2) "Eligible costs" means, as applied to a qualified project to be financed with federal funds, the costs that are permitted under applicable federal laws, requirements, procedures and guidelines. As applied to all other qualified projects, "eligible costs" includes the costs of preliminary engineering, traffic and revenue studies, environmental studies, right-of-way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities and other costs necessary for the qualified project. "Eligible costs" also includes project monitoring costs incurred by the department of transportation, as provided in § 4-31-1205(d);

(3)(A) "Eligible project" means:

(i) A transportation infrastructure project, including streets, highways, bridges, tunnels and any related roadway facilities;

(ii) Intelligent transportation systems;

(iii) Air transport and airport facilities;

(iv) Railways and rail facilities;

(v) Port facilities;

(vi) Mass transit systems or transit capital projects;

(vii) Parking facilities; and

(viii) Pedestrian or bicycle facilities that provide public benefits by enhancing mobility or safety, promoting economic development or increasing the quality of life and general welfare of the public;

(B) There may be included as part of any "eligible project" all improvements, including equipment, necessary to the full utilization of the project, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive and air transportation, transportation facilities incidental to the project and the dredging and improving of harbors and waterways;

(C) None of the descriptive words in subdivision (3)(B) shall be construed to constitute a limitation;

(4) "Financing agreement" means any agreement entered into between the authority and a qualified borrower pertaining to a loan entered into under this part;

(5) "Fund" means the Tennessee transportation state infrastructure fund;

(6) "Government unit" means a county, incorporated town or city, metropolitan government, state agency, or instrumentality, authority or agency of government created by any one (1) or more of the listed entities or by an act of the general assembly, including combinations of two (2) or more of these entities, acting jointly to construct, own or operate a qualified project, or any other state authority, board, commission, agency or department that may construct, own or operate a qualified project;

(7) "Loan" means an obligation subject to repayment that is provided by the fund to a qualified borrower for all or part of the eligible costs of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of the eligible costs of a qualified project;

(8) "Project revenues" or "revenues" mean all rates, rents, fees, assessments, charges and other receipts derived or to be derived by a qualified borrower from a qualified project or otherwise made available, including, but not limited to, tax revenues, and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part or from any other revenue producing facility under the ownership or control of the qualified borrower, including, without limitation, proceeds of grants, gifts, appropriations, investment earnings, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other source as may be provided by the qualified borrower;

(9) "Qualified borrower" means any governmental unit authorized to construct, operate, or own a qualified project;

(10) "Qualified project" means an eligible project that has been recommended by the department of transportation to receive a loan from the fund to defray an eligible cost; and

(11) "Security" means that which is determined by the authority to be acceptable to secure a loan to a qualified borrower under this part and includes, but is not limited to, project revenues, ad valorem taxes, state-shared taxes, letters of credit and bond insurance.

History.
Acts 2009, ch. 525, § 1.

4-31-1203. Establishment — Accounts — Investment of funds — Interest and earnings.

(a) The department of finance and administration shall establish the Tennessee transportation state infrastructure fund, in the state treasury, under the control of the authority.

(b) For necessary and convenient administration of the fund, the authority shall establish accounts and subaccounts as necessary to meet any applicable federal law requirements or as necessary or desirable in order to implement this part.

(c) All federal funds shall be invested as required by applicable federal law, and all other funds shall be invested pursuant to state law.

(d) All interest and earnings of the fund shall remain a part of the fund.

(e) No part of the fund shall revert to the general fund on any June 30, but shall remain a part of the fund available for expenditure in accordance with this part.

History.
Acts 2009, ch. 525, § 1.

4-31-1204. Transfer of funds from existing fund — Capitalization of fund — Soliciting funds — Prohibition against commingling funds — Entering cooperative agreements.

(a) The state treasurer shall transfer the balance from the existing fund for the Tennessee state infrastructure bank, administered by the department of transportation, on July 1, 2009, to the fund established in § 4-31-1203.

(b) The following sources may be used to capitalize the fund and for the authority to carry out its purposes:

(1) Appropriations by the general assembly;

(2) Federal funds apportioned and available to the state, as approved by the department of transportation;

(3) Contributions, donations, grants and deposits from the federal government, government units, private entities and any other source as may become available to the fund; and

(4) All payments of principal and interest on loans or pursuant to the financing agreements.

(c) In addition to the powers specified in part 1 of this chapter, the authority may request and receive funds from federal, state or other government sources or from private entities. The authority may request the department of transportation, or other state agencies or officials, as appropriate, to act on its behalf or to assist in making application for such funds. All funds received from government or private sources shall be deposited in the fund to be used in accordance with this part.

(d) The authority shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the fund.

(e) The authority may enter into cooperative agreements with agencies of the federal government or other state agencies as necessary or desirable to implement this part.

History.
Acts 2009, ch. 525, § 1.

4-31-1205. Recommendation of projects — Loans — Qualified borrowers — Reimbursement of costs — Loan fees.

(a) The commissioner of transportation shall review a proposed project and shall determine if it is an eligible project and, if so, whether or not to recommend the project to the authority. Preference may be given to eligible

projects that have financial support in addition to any loan that may be received from the fund.

(b) Upon recommendation by the department of transportation of a qualified project, the authority has the power and is authorized to make loans to a qualified borrower; provided, that the fund has sufficient money to make the loan to pay for all or part of the eligible costs of a qualified project. The term of the loan shall not exceed the useful life of the project, as determined by the authority in consultation with the department of transportation. The authority shall require the qualified borrower to enter into a financing agreement in connection with its loan. The authority, in consultation with the department of transportation, shall determine the form and content of loan applications and financing agreements, including the term and rate or rates of interest on a financing agreement and security required. The authority shall determine the interest rate for a loan under this part in a manner consistent with interest rates established for loans under title 68, chapter 221, part 10. The terms and conditions of a loan made with federal funds shall comply with applicable federal requirements.

(c) Loans shall be made only to qualified borrowers that:

(1) In the opinion of the authority demonstrate financial capability to assure sufficient revenues to operate and maintain the eligible project for its useful life and to repay the loan;

(2) Pledge the security as required by the authority for repayment of the loan;

(3) Provide assurances that are reasonably requested by the authority and the department of transportation; and

(4) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the project's financial records in accordance with generally accepted governmental auditing standards and with minimum standards prescribed by the comptroller of the treasury, and to file the audit with the comptroller. In the event of the failure or refusal of a qualified borrower to have the audit prepared, the comptroller may appoint an accountant or direct the department of audit to prepare the audit at the expense of the borrower.

(d) The department of transportation shall review and approve, and submit to the authority for reimbursement, such eligible costs as may be incurred by a qualified borrower for a qualified project. For this purpose, the department of transportation shall have authority to inspect the work, examine project records and employ consultants as it deems appropriate to assist in carrying out such functions. To cover the costs of performing such functions, the department of transportation may charge the costs to the qualified project as an eligible cost and receive reimbursement for the costs from the authority.

(e) The authority may assess a loan fee to cover the costs of administration of the program. The fee may be apportioned between the authority and the department of transportation.

History.
Acts 2009, ch. 525, § 1.

4-31-1206. Part supplemental to other law — Debt limit not applicable — Adequate security — Pledge valid and binding — Misuse of loan.

(a) This part is in addition and supplemental to any other law providing for the financing of eligible projects of qualified borrowers and shall not be deemed to amend or repeal any other law.

(b) Qualified borrowers may enter into financing agreements under this part, notwithstanding and without regard to any limit on indebtedness provided by law. No requirements or restraints applicable to borrowing by qualified borrowers contained in any other law shall be applicable to financing agreements or to the proceedings for approval of the financing agreements entered into under this part. Qualified borrowers entering into financing agreements may perform any acts, take any action, adopt any proceedings and make and carry out any contracts or agreements with the authority as may be agreed to by the authority and any qualified borrower for the carrying out of the purposes contemplated by this part.

(c) In order to provide adequate security as may be required by the authority for a loan under this part, a qualified borrower is authorized to:

(1) Receive, apply, pledge, assign and grant security interests in project revenues and any revenues from any other revenue producing facilities from which the qualified borrower derives project revenues to secure its obligations as provided in this part;

(2) Pledge its state-shared taxes, as defined in § 4-31-102, if any;

(3) Pledge the full faith and credit and unlimited taxing power, if any, of the qualified borrower as to all taxable property of the qualified borrower to the punctual payment of the loan; and

(4) Pledge any other security determined by the authority to be acceptable to secure a loan under this part.

(d)(1) Any pledge made by the qualified borrower pursuant to this part shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the qualified borrower shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the qualified borrower, regardless of whether the parties have notice of the lien of the pledge.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(e) A qualified borrower shall ensure that all loans received from the authority pursuant to this part are used in accordance with applicable federal and state law. The qualified borrower shall be liable for the repayment of the funds or damages caused in the event of any misuse of the loan received pursuant to this part.

History.
Acts 2009, ch. 525, § 1.

4-31-1207. Default on amounts due.

(a) If a qualified borrower fails to collect and remit in full all amounts due to the authority on the date the amounts are due under the terms of any note or other obligation of the qualified borrower, or if the qualified borrower fails to repay funds or pay damages in the event of misuse of loans received pursuant to this part, the authority shall notify the appropriate state officials who shall withhold all or a portion of the funds of the state and all funds administered by the state and its agencies, boards and instrumentalities allotted or appropriated to the borrower, including, but not limited to, state-shared taxes and apply an amount necessary to the payment of the amount due.

(b) Nothing contained in this section mandates the withholding of funds allocated to a qualified borrower that would violate contracts to which the state is a party, the requirements of federal law imposed on the state or judgments of a court binding on the state.

History.
Acts 2009, ch. 525, § 1.

4-31-1208. Annual report — Audit.

(a) Following the close of each state fiscal year, the authority shall submit an annual report of its activities for the preceding year to the governor, the speaker of the senate and the speaker of the house of representatives and make the report available to the general assembly. The authority also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program.

(b) The annual reports and all books of accounts and financial records of the authority shall be subject to audit annually by the comptroller of the treasury.

History.
Acts 2009, ch. 525, § 1.

Cross-References.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-31-1209. Policies and procedures.

The authority, in consultation with the department of transportation, is authorized to adopt policies and procedures to effectuate the purposes of this part.

History.
Acts 2009, ch. 525, § 1.

CHAPTER 32

GOVERNOR'S OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES

Section
4-32-101. Creation.
4-32-102. Purposes.
4-32-103. Nonprofit partnerships.

Section
4-32-104. Expenses and administration.
4-32-105. Retirement benefits.
4-32-106. Health benefits.
4-32-107. Annual reports and audits.

4-32-101. Creation.

There is established a "governor's office of faith-based and community initiatives," referred to as the "office" in this chapter.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

Compiler's Notes.
Former Title 4, Chapter 32, §§ 4-32-101 — 4-32-103, (Acts 1978, ch. 840, §§ 1, 2; T.C.A., § 4-3201; T.C.A., § 4-3202; Acts 1986, ch. 691, § 1; Acts 1986, ch. 844, § 8; 1987, ch. 14, § 4; Acts 1996, ch. 1067, § 1; 1997, ch. 193, §§ 1, 2; 1999, ch. 520, §§ 30, 31; repealed by Acts 2013, ch. 454, § 3, effective July 1, 2013) concerned the Institute for Labor-Management Studies.

4-32-102. Purposes.

In order to maximize the effectiveness of state government through collaboration with faith-based and community initiatives to serve Tennesseans with respect to public purposes, such as improving public safety, overcoming addiction, strengthening families and communities, and overcoming poverty, the office shall, to the extent permitted by law:

(1) Promote and foster the development of relationships and coordination between state government and faith-based and community initiatives and serve as a resource for and liaison between state government and such initiatives;

(2) Coordinate activities designed to mobilize public support for faith-based and community initiatives through volunteerism, special projects, and public-private partnerships;

(3) Raise ideas and policy options to the governor that would assist, strengthen, expand, or replicate successful faith-based and community programs;

(4) Ensure that state government decisions and programs are consistent with the goal of partnering with faith-based and community initiatives when doing so is in the public interest and monitor how such decisions and programs affect faith-based and community initiatives;

(5) Work with state, local, and community policymakers, volunteers, and public officials to facilitate coordination with and empowerment of faith-based and other community organizations where doing so would improve such groups' service to the communities involved; and

(6) Showcase and herald successful and innovative faith-based and community organizations and civic initiatives.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

4-32-103. Nonprofit partnerships.

(a) The office may partner with a nonprofit public benefit corporation that is organized to maximize the effectiveness of faith-based and community initiatives in serving Tennesseans with respect to public purposes, in order to carry out the purposes of the office.

(b) The governor shall select the members of the board of directors of the nonprofit partner. The nonprofit partner's board may select its own chair. The nonprofit partner has an executive director, who is selected by the governor.

(c) The nonprofit partner shall be properly incorporated under the laws of the state of Tennessee and approved by the internal revenue service as an organization that is exempt from federal income tax under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), by virtue of being an organization described in § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

(d) The nonprofit partner may receive and solicit funds from the general public in accordance with title 48, chapter 101, part 5.

(e) Costs to underwrite the nonprofit partner's activities related to the office must be borne from revenues of the nonprofit partner, and no state employee shall benefit from such proceeds.

(f) The nonprofit partner may exercise all powers authorized under the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-69.

(g) The nonprofit partner may receive staff and other assistance from any department, agency, board or commission, or other division of state government.

(h) Subject to existing statutes, rules, and policies, the nonprofit partner may enter into agreements with state government for procurement of office space, supplies, and other items, as necessary to effectively carry out the purposes of this chapter.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

4-32-104. Expenses and administration.

(a) It is the intent of the general assembly that the state shall realize no increased cost as a result of this chapter.

(b) For administrative purposes, the office is attached to the department of finance and administration.

(c) Any department, agency, board or commission, or other division of state government may provide staff and other assistance to the office, and all departments, agencies, boards and commissions, and other divisions of state government shall fully cooperate with the office and shall provide staff support and other assistance as reasonably required, subject to existing statutes, rules, and policies.

(d) The office may enter into such contractual and promotional agreements

necessary to maximize the effectiveness of state government through collaboration with faith-based and community initiatives to serve Tennesseans with respect to public purposes.

(e) The office may work with local governments, private organizations, and citizens as it plans and engages in activities related to the office.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

4-32-105. Retirement benefits.

(a) The nonprofit partner shall be eligible to be a participating employer in the Tennessee consolidated retirement system upon passage of a resolution by the nonprofit's board of directors authorizing:

(1) An actuarial study; and

(2) Participation, and accepting the liability as a result of the participation, by its full-time employees.

(b) The employees of the nonprofit partner must make the same contributions, participate in the same manner, and are eligible for the same benefits as employees of local governments participating in the retirement system under title 8, chapter 35, part 2.

(c) The employees of the nonprofit partner are entitled to credit for prior service, as approved by the board of directors of the nonprofit, under the same provisions that apply to employees of local governments.

(d) The retirement system is not liable for the payment of retirement allowances or other payments on account of employees of the nonprofit partner, or the beneficiaries of such employees, for which reserves have not been previously created from funds contributed by the nonprofit partner, its employees, or the nonprofit partner and its employees.

(e) In case of the withdrawal of the nonprofit partner as a participating employer, the benefits of the members and beneficiaries shall be determined in accordance with § 8-35-211.

(f) All costs associated with retirement coverage, including administrative costs, are the responsibility of the nonprofit partner.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

4-32-106. Health benefits.

The nonprofit partner may participate, the same as an eligible quasi-governmental organization, in the health insurance plan authorized under § 8-27-702, to provide health insurance for its employees, as long as such nonprofit partner satisfies each of the requirements of § 8-27-702. This participation shall be governed by, and subject to, title 8, chapter 27, part 7.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

4-32-107. Annual reports and audits.

(a) The nonprofit partner shall annually submit to the governor and the speakers of the senate and the house of representatives, within ninety (90) days after the end of its fiscal year, a report setting forth its operation and accomplishments.

(b) The nonprofit partner is subject to examination and audit by the comptroller of the treasury in the same manner as prescribed for departments and agencies of the state.

History.
Acts 2019, ch. 218, § 1.

Code Commission Notes. Acts 2019, ch. 218, § 1 enacted a new chapter 60, §§ 4-60-101 – 4-60-107, but the chapter has been redesignated as chapter 32, §§ 4-32-101 – 4-32-107, by authority of the Code Commission

CHAPTER 33

TENNESSEE ECONOMIC IMPACT DISCLOSURE LAW OF 1979

Section
4-33-101. Short title.
4-33-102. Purpose — Legislative intent.
4-33-103. Chapter definitions.
4-33-104. Economic impact statements.
4-33-105. [Reserved.]
4-33-106. Exempt agency actions.
4-33-107. Copies of economic impact statements.

4-33-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Economic Impact Disclosure Law of 1979."

History.
Acts 1979, ch. 215, § 1; T.C.A., § 4-3301.

4-33-102. Purpose — Legislative intent.

(a) It is the purpose and intent of the general assembly by this enactment to require state agencies to state the direct and indirect costs of government programs to consumers and the relationship between the costs of a program and the benefits to be received from the program.

(b) The general assembly intends this chapter to supplement existing laws and regulations.

(c) Nothing in this chapter shall affect existing statutory obligations of a state agency.

History.
Acts 1979, ch. 215, § 2; T.C.A., § 4-3302.

4-33-103. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agency" means every department or organization described in chapter 3 of this title; and

(2) "Agency action" includes any action by an agency or subdivision thereof that may have substantial economic impact upon any person. Substantial economic impact may occur through a related series of agency decisions that individually may not have substantial economic impact, but that cumulatively have substantial economic impact.

History.
Acts 1979, ch. 215, § 3; T.C.A., § 4-3303.

4-33-104. Economic impact statements.

(a) Upon written request by the commissioner or head of any agency, or by any member of the general assembly, each agency shall within a reasonable time justify a proposed action by preparing an economic impact statement using professionally accepted methodology, with quantification of data to the extent practicable, giving effect to both short-term and long-term consequences; provided, that this section shall not apply to any action of the department of transportation in which federal-aid matching funds are used.

(b) The economic impact statement shall include the following information:

(1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action;

(2) A determination that the action is the least-cost method for achieving the stated purpose;

(3) A comparison of the cost-benefit relation of the action to nonaction;

(4) A determination that the action represents the most efficient allocation of public and private resources;

(5) A determination of the effect of the action on competition;

(6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur;

(7) A determination of the effect of the action on employment in the geographical area in which the action would occur;

(8) The source of revenue to be used for the action; and

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

(c) If, during the course of an agency action, information required by the economic impact statement materially changes, the agency shall amend the statement with the correct information.

History.
Acts 1979, ch. 215, § 4; T.C.A., § 4-3304;
Acts 1980, ch. 664, § 1.

4-33-105. [Reserved.]

4-33-106. Exempt agency actions.

The following agency actions are exempt from this chapter:

(1) The collection and payment of social security funds, retirement funds or employee benefit funds;

(2) Participation in any federal program, if under federal law the participation would be prevented by compliance with this chapter;

(3) All emergency rules, or emergency purchases, if the governor agrees that an emergency exists and that a timely economic impact statement could not be prepared, but within a reasonable period of time after the action, an appropriate economic impact statement shall be prepared;

(4) All legislative actions;

(5) All purchases by any state agency that have a fair market value or monetary value that is less than twenty-five thousand dollars ($25,000);

(6) Ministerial action by an agency that complies with applicable statutes and rules; provided, however, this exemption does not include an agency action where the contracting of services is considered or used instead of state employees;

(7) Action by a state agency that is required by law to be maintained as confidential;

(8) The preparation and sale of all bonds that are processed by the state funding board;

(9) Expenditures of money from trust funds that previously have been designed by the general assembly for a specific purpose;

(10) The prosecution of civil, criminal or administrative actions before any court or before an administrative hearing officer; and

(11) Actions involving persons in the custody of the state voluntarily or under court order.

History.
Acts 1979, ch. 215, § 6; T.C.A., § 4-3306; Acts 1994, ch. 777, §§ 1, 2.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-33-107. Copies of economic impact statements.

In addition to any copies that may be provided to other individuals or entities, each agency that prepares an economic impact statement pursuant to this chapter shall provide a copy of such impact statement to the senate and house of representatives government operations committees.

History.
Acts 1979, ch. 215, § 7; T.C.A., § 4-3307.

CHAPTER 34

NATIVE AMERICAN INDIANS

Section

4-34-101. Inclusion of "Native American Indian" as racial or ethnic origin.
4-34-102. Eligibility for minority-based benefits.

4-34-101. Inclusion of "Native American Indian" as racial or ethnic origin.

(a) Notwithstanding any law to the contrary, a state or local governmental entity requiring or requesting a person to divulge racial or ethnic origin on an employment form, education application, or other such document shall contain a space, box, or blank clearly designated "Native American Indian."

(b) This section may not be construed to require a governmental entity to revise the forms in the manner required by this section before exhausting its supply of forms on hand on January 1, 1995.

History.
Acts 1994, ch. 971, § 1; T.C.A. § 4-34-201.

Code Commission Notes. Part 2, §§ 4-34-201 — 4-34-202 was renumbered as chapter 34, §§ 4-34-101 — 4-34-102, by authority of the Code Commission in 2021.

Former part 1, §§ 4-34-101 — 4-34-108 (Acts 2003, ch. 344, §§ 2-9), concerning the commission of Indian affairs, was deleted as obsolete by the code commission in 2011.

4-34-102. Eligibility for minority-based benefits.

Notwithstanding any other law to the contrary, a Native American or an African-American is eligible to receive scholarships, grants or any other benefit afforded to minorities from the University of Tennessee system, the board of regents system, or any Tennessee school system. As used in this section, "Native American" means an individual recognized as Native American by a federally recognized tribe or a state.

History.
Acts 1994, ch. 972, § 1; T.C.A. § 4-34-202.

Code Commission Notes. Part 2, §§ 4-34-201 — 4-34-202 was renumbered as chapter 34, §§ 4-34-101 — 4-34-102, by authority of the Code Commission in 2021.

Former part 1, §§ 4-34-101 — 4-34-108 (Acts 2003, ch. 344, §§ 2-9), concerning the commission of Indian affairs, was deleted as obsolete by the code commission in 2011.

CHAPTER 35

STATE OF TENNESSEE AUDIT COMMITTEE ACT OF 2005

Section
4-35-101. Short title.
4-35-102. Creation of audit committees.
4-35-103. Development of charter — Guidelines for and review of charter — Approval.
4-35-104. Standing committee — Members — Meetings.
4-35-105. Responsibilities of audit committee.
4-35-106. Powers and duties.
4-35-107. Establishment of confidential reporting of illegal, improper, wasteful or fraudulent activity.
4-35-108. Notice of meetings — Open meetings — Exceptions.

4-35-101. Short title.

This chapter shall be known and may be cited as the "State of Tennessee Audit Committee Act of 2005."

History.
Acts 2005, ch. 310, § 2.

4-35-102. Creation of audit committees.

(a) A state governing board, council, commission, or equivalent body that has the authority to hire and terminate its employees shall create an audit committee, subject to subsection (c).

(b) A state governing board, council, commission, or equivalent body that is responsible for the preparation of financial statements, whether included in the financial statements of other entities or free standing, shall create an audit committee, subject to subsection (c).

(c) A state governing board, council, commission, or equivalent body subject to subsections (a) and (b) may be excepted from the requirement to form an audit committee only upon the approval of the comptroller of the treasury.

History.
Acts 2005, ch. 310, § 3.

4-35-103. Development of charter — Guidelines for and review of charter — Approval.

(a) An audit committee created pursuant to this chapter shall develop a written charter addressing the audit committee's purpose, powers, duties, and mission.

(b) The comptroller of the treasury shall establish guidelines for creation of an audit committee charter and shall review the proposed charter to determine whether the charter contains the minimum necessary requirements.

(c) The charter, and any subsequent amendments, shall be presented to the full state governing board, council, commission, or equivalent body, and the comptroller of the treasury for approval.

History.
Acts 2005, ch. 310, § 4.

4-35-104. Standing committee — Members — Meetings.

(a) The audit committee shall be a standing committee of the state governing board, council, commission, or equivalent body.

(b) An audit committee created pursuant to this chapter shall have at a minimum three (3) members, chosen as prescribed in the audit committee charter.

(c)(1) The audit committee's charter shall provide for the frequency of and procedures relative to conducting meetings.

(2) The audit committee shall meet upon the request of the comptroller of the treasury.

History.
Acts 2005, ch. 310, § 5.

4-35-105. Responsibilities of audit committee.

The responsibilities of an audit committee created pursuant to this chapter include, but are not limited to:

(1) Overseeing the financial reporting and related disclosures, especially

when financial statements are issued;

(2) Evaluating management's assessment of the body's system of internal controls;

(3) Formally reiterating, on a regular basis, to the state governing board, council, commission, equivalent body, or management and staff of the agency to which the audit committee is attached, the responsibility of the state governing board, council, commission, equivalent body, or management and staff of the agency for preventing, detecting, and reporting fraud, waste, and abuse;

(4) Serving as a facilitator of any audits or investigations of the body to which the audit committee is attached, including advising auditors and investigators of any information the audit committee may receive pertinent to audit or investigative matters;

(5) Informing the comptroller of the treasury of the results of assessment and controls to reduce the risk of fraud; and

(6) Promptly notifying the comptroller of the treasury of any indications of fraud.

History.
Acts 2005, ch. 310, § 6.

4-35-106. Powers and duties.

An audit committee created pursuant to this chapter shall have the power and duty to take whatever actions the audit committee deems necessary in carrying out its responsibilities in this chapter, including, but not limited to:

(1) Seeking information the audit committee requires from employees or external parties;

(2) Meeting with agency management, board, council, commission, or equivalent body members, external and internal auditors, legal counsel, or others as necessary; and

(3) Requiring internal auditors to report directly to the audit committee.

History.
Acts 2005, ch. 310, § 7.

4-35-107. Establishment of confidential reporting of illegal, improper, wasteful or fraudulent activity.

(a) An audit committee created pursuant to this chapter shall establish a process by which employees, taxpayers, or other citizens may confidentially report suspected illegal, improper, wasteful, or fraudulent activity. If the information provided causes the chair of the audit committee to believe that illegal, improper, wasteful, or fraudulent activity may have occurred, then the chair of the audit committee shall report the information to the office of the comptroller of the treasury. The comptroller of the treasury shall have the power to prescribe the method of making the report by the chair of the audit committee. The detailed information received and generated pursuant to a report of suspected illegal, improper, wasteful, or fraudulent activity shall be considered audit working papers and is therefore not an open record pursuant to title 10, chapter 7.

(b) Section 8-50-116 shall apply to all state governing board, council, commission or equivalent body employees. In addition, no state governing board, council, commission or equivalent body's employees shall suffer any of the prohibited retaliatory actions specified in § 8-50-116 for reporting or cooperating with the audit committee, internal auditors, or auditors from, or approved by, the comptroller of the treasury, or for reporting any facts to the state governmental body to which the audit committee is attached. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to this chapter commits a Class A misdemeanor.

History.
Acts 2005, ch. 310, § 8; 2013, ch. 64, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.
Penalty for Class A misdemeanor, 40-35-111.

4-35-108. Notice of meetings — Open meetings — Exceptions.

(a) Except as provided in subsection (b), all meetings of an audit committee created pursuant to this chapter shall abide by the notice requirements adhered to by the state governing board, council, commission, or equivalent body to which the audit committee is attached.

(b) All meetings of an audit committee created pursuant to this chapter shall be subject to the open meetings provisions of title 8, chapter 44, except that the audit committee may hold confidential, nonpublic executive sessions to discuss:

(1) Items deemed not subject to public inspection under §§ 10-7-503 and 10-7-504, and all other matters designated as confidential or privileged under this code;

(2) Litigation;

(3) Audits or investigations;

(4) Information protected by federal law; and

(5) Matters involving information under § 4-35-107(a), where the informant has requested anonymity.

(c) No business, other than that described under subdivisions (b)(1)-(5), shall be considered during a confidential, nonpublic executive session by the audit committee.

(d) For purposes of providing notice of a confidential, nonpublic executive session, the agenda must disclose the general nature of discussion as described under subdivisions (b)(1)-(5).

(e) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:

(1) All business relating to subject matter that is public in nature shall be conducted first; and

(2) At the conclusion of the meeting relating to subject matter that is public in nature, the chair shall announce that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential under subdivisions (b)(1)-(5). When everyone at the meeting who is not authorized to attend the confidential portion of the

meeting has departed, the confidential portion of the meeting shall commence.

(f) This chapter is not intended to prevent the full state governing board, commission, council, or equivalent body from going into confidential, nonpublic executive session for the purpose of further discussing those matters as described under subdivisions (b)(1)-(5). All portions of meetings of the full state governing board, commission, council, or equivalent body, where matters described under subdivisions (b)(1)-(5) will be discussed, shall be exempt from title 8, chapter 44; provided, that the full state governing board, commission, council or equivalent body shall abide by the notice requirements of subsections (c)-(e).

History.
Acts 2005, ch. 310, § 9.

Cross-References.
Confidentiality of public records, § 10-7-504.

CHAPTER 36

[RESERVED]

CHAPTER 37

CHILD CARE PUBLIC/PRIVATE PARTNERSHIPS PROGRAM

Section
4-37-101. Creation — Use of matching funds — Departmental report — Promulgation of rules and regulations.

4-37-101. Creation — Use of matching funds — Departmental report — Promulgation of rules and regulations.

(a)(1) The department of human services is authorized to work with local communities, industry and other entities to develop the preliminary parameters of a program of public/private partnerships to enhance funding of child care. In such efforts, the department shall involve entities such as the Tennessee Child Care Facilities and Programs Corporation, established pursuant to [former] part 1 of this chapter [repealed], the appropriate local families first councils and the work force development council.

(2) In exploring such partnerships, the department shall examine the feasibility of securing federal and state funding as an incentive for developing matching local funds derived from local governments, employers, charitable institutions or foundations and other sources, so that communities may seek local, flexible partnerships with employers for the creation and enhancement of child care.

(b)(1) Only to the extent of any current funding not otherwise obligated by law, the department may also establish preliminary public/private partnerships through a program based upon the principles in subsection (a). In any preliminary program created pursuant to this subsection (b), any matching funds shall be used with the input and direction of local communities to meet the needs of working parents and to create, expand or upgrade on-site child care facilities; to contract or partner with child care agencies that provide

such types of child care as sick-care, after-hours care for children and any other forms of child care that become necessary to meet the needs of children, parents, and employers; and to use such funds as incentives or for studies that may be necessary to aid in the development of any child care for the particular community.

(2) Any funds used pursuant to this subsection (b) shall supplement or extend the use of existing public or private funding and shall not be used to supplant the maintenance of effort being exerted currently by the employer or other contributor.

(3) Any funds utilized pursuant to this subsection (b) shall be for child care provided in a facility licensed, approved or certified by a state child care licensing, certification or approval entity under title 37, 49, or 71, or in any other facility or program approved for the care of children by the department.

(c) The department is authorized to promulgate rules and regulations, which may include emergency rules, pursuant to chapter 5 of this title, to implement subsection (b). Such rules may include criteria for grants and use of program funds and shall be limited to any currently available funds not otherwise obligated by law.

History.

Acts 2000, ch. 981, § 80; 2009, ch. 566, § 12; T.C.A. § 4-37-201.

Code Commission Notes. Part 2, § 4-37-201 was renumbered as chapter 37, § 4-37-101 by authority of the Code Commission in 2021.

Former § 4-37-201(c), concerning a report to the house of representatives and senate committees, was deemed obsolete by the code commission in 2005.

Compiler's Notes.

Former title 4, ch. 37, part 1, §§ 4-37-101 — 4-37-118 (Acts 1989, ch. 420, §§ 1-18; 1992, ch. 825, §§ 1-10; 1994, ch. 708, §§ 1, 2; 2000, ch. 981, § 52), concerning the Tennessee child care facilities corporation, was repealed by Acts 2009, ch. 80, § 2, effective April 27, 2009.

Acts 2009, ch. 80, § 3 provided that: "Any funds remaining in the child care facilities account established by § 4-37-110 shall revert to the general fund. All rights, duties, privileges and responsibilities of contracts entered into by the Tennessee child care facilities corporation shall be assumed by the department of human services."

Former title 4, chapter 37, part 1, referred to in this section, concerning the Tennessee child care facilities corporation, was repealed by Acts 2009, ch. 80, § 2, effective April 27, 2009.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

CHAPTER 38

REFUGEE ABSORPTIVE CAPACITY ACT

Section

4-38-101. Short title.
4-38-102. Chapter definitions.
4-38-103. Duties of Tennessee office for refugees.
4-38-104. Request for moratorium.

4-38-101. Short title.

This chapter shall be known and may be cited as the "Refugee Absorptive Capacity Act."

History.
Acts 2011, ch. 316, § 1.

Compiler's Notes.
For the preamble to the act creating the Refugee Absorptive Capacity Act, please refer to Acts 2011, ch. 316.

4-38-102. Chapter definitions.

As used in this chapter:

(1) "Absorptive capacity" is a determination made by a local government evaluating, for a host community within that jurisdiction:

(A) The capacity of the community's social service and healthcare agencies to meet the existing needs of the community's current residents;

(B) The availability of affordable housing, low-cost housing, or both, and existing waiting lists for such housing in the community;

(C) The capacity of the local school district to meet the needs of the existing or anticipated refugee student population; and

(D) The ability of the local economy to absorb new workers without causing competition with local residents for job opportunities, displacing existing local workers, or adversely affecting the wages or working conditions of the local workforce;

(2) "Local government" or "local governments" refers to either the city council, governing body of any county having a metropolitan form of government, or county legislative body which regulates any host community being considered for refugee resettlement activity;

(3) "Tennessee office for refugees" means the state office which administers the refugee program for this state, or the entity or agency to whom the state has delegated such function and that has been designated and recognized by the federal government to administer such program; and

(4) "Tennessee refugee coordinator" means the official designated by the Tennessee office for refugees.

History.
Acts 2011, ch. 316, § 2.

Compiler's Notes.
For the preamble to the act creating the Refugee Absorptive Capacity Act, please refer to Acts 2011, ch. 316.

4-38-103. Duties of Tennessee office for refugees.

The Tennessee office for refugees shall:

(1) Provide at least a written quarterly report to representatives of local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees' arrival, and appear before the local government to provide additional information at the request of the local government. Specifically, the local government may request reporting of information related to the factors of absorptive capacity as stated in § 4-38-102;

(2) Ensure that representatives of local resettlement agencies, local community service agencies, and other publicly-funded or tax-exempt agencies that serve refugees in this state shall upon request meet with representatives of local governments to plan and coordinate the appropriate placement of refugees in the host community in advance of the refugees' arrival;

(3) Execute a letter of agreement with each agency providing refugee resettlement services in this state. The letter of agreement shall require the parties to mutually consult and prepare a plan for the initial placement of refugees in a host community and set forth the continuing process of consultation between the parties. The provisions of the letter of agreement shall be consistent with federal law regulating the resettlement of refugees;

(4) At least quarterly transmit to the chairs of the state government committee of the house of representatives and state and local government committee of the senate, and to the chair of the budget committee of either the city council or the county legislative body regulating the host community copies of:

(A) The letters of agreement;

(B) Any initial refugee placement plans prepared pursuant to letters of agreement; and

(C) Any communications received and responded to pursuant to subdivision (5), including how or to the extent any issue regarding the concerns of host communities and representatives of local governments was resolved; and

(5) Ensure that residents of host communities and representatives of local governments are aware that any and all concerns regarding local refugee resettlement activities in any host community shall be filed with the Tennessee office for refugees and further that the Tennessee office for refugees shall respond timely in writing to all such communications.

History.
Acts 2011, ch. 316, § 3; 2013, ch. 236, § 71.

Compiler's Notes.
For the preamble to the act creating the Refugee Absorptive Capacity Act, please refer to Acts 2011, ch. 316.

4-38-104. Request for moratorium.

(a) Based on the factors in § 4-38-102(1), upon the adoption of a resolution the legislative body of a local government may request a moratorium on new refugee resettlement activities, documenting that the host community lacks absorptive capacity and that further resettlement of refugees in the host community would result in an adverse impact to existing residents. Such resolution shall be forwarded to the Tennessee office for refugees for appropriate action pursuant to subsection (b).

(b) The Tennessee office for refugees shall accept and may forward to the United States state department, the request from a local government for a moratorium on new refugee resettlement activities in a host community which lacks absorptive capacity. The United States state department may thereafter implement the request for a moratorium.

(c) Upon notice of a determination made pursuant to this section, the United States state department may thereafter suspend additional resettlement of refugees in that community, until the state refugee coordinator and the local government have jointly determined that absorptive capacity for refugee resettlement exists to implement any further refugee resettlement activities in the host community.

(d) The period of validity of a moratorium described in subsection (c) or any extension thereof, shall not exceed one (1) year.

History.
Acts 2011, ch. 316, § 4.

Compiler's Notes.
For the preamble to the act creating the Refugee Absorptive Capacity Act, please refer to Acts 2011, ch. 316.

Attorney General Opinions.
The legislative branch or the executive branch of the State of Tennessee may not refuse to accept for resettlement within the State individuals whom the federal government has processed and admitted to the United States as refugees. OAG 15-77, 2015 Tenn. AG LEXIS 78 (11/30/2015).

CHAPTER 39

PAYMENT OF TAXES BY STATE VENDORS AND SUBCONTRACTORS

Section
4-39-101. Chapter definitions.
4-39-102. Major procurement contract to contain provision for payment of sales and use taxes by vendor and subcontractors.
4-39-103. Vendor contract with subcontractor to include provision for payment of sales and use taxes by subcontractor.

4-39-101. Chapter definitions.

As used in this chapter:

(1) "Major procurement contract" means any good or service costing in excess of seventy-five thousand dollars ($75,000), including major advertising contracts, annuity contracts, consulting services, equipment, and other products and services unique to the functions performed by the state governmental entity, but not including materials, supplies, equipment, and services common to the operations of any ordinary business;

(2) "Retailer" means a person or entity that sells goods or services on behalf of a state governmental entity;

(3) "State governmental entity" means a state agency, department, board, or commission, or a public corporation or quasi-public instrumentality that performs essential public functions entrusted to it by the state; and

(4) "Vendor" means a person or entity that provides or proposes to provide goods or services to the state governmental entity pursuant to a major procurement contract, but does not include an employee of the state governmental entity, retailer or a state governmental entity.

History.
Acts 2015, ch. 515, § 4.

Compiler's Notes.
Acts 2015, ch. 515, § 5 provided that the act, which enacted this chapter, shall apply to contracts entered into or renewed on or after July 1, 2015.

4-39-102. Major procurement contract to contain provision for payment of sales and use taxes by vendor and subcontractors.

A state governmental entity shall include in any major procurement contract with a vendor a provision that the vendor and the vendor's subcontractors,

shall remit sales and use taxes on sales of goods or services made by the vendor or the vendor's subcontractor.

History.
Acts 2015, ch. 515, § 2.

Compiler's Notes.
Acts 2015, ch. 515, § 5 provided that the act, which enacted this chapter, shall apply to contracts entered into or renewed on or after July 1, 2015.

4-39-103. Vendor contract with subcontractor to include provision for payment of sales and use taxes by subcontractor.

If any portion of the cost of a vendor's major procurement contract with a state governmental entity is subcontracted, the vendor shall include in the contract with the subcontractor a provision that the subcontractor shall remit sales and use taxes on taxable sales of goods or services made by the subcontractor.

History.
Acts 2015, ch. 515, § 3.

Compiler's Notes.
Acts 2015, ch. 515, § 5 provided that the act, which enacted this chapter, shall apply to contracts entered into or renewed on or after July 1, 2015.

CHAPTER 40

[RESERVED]

CHAPTER 41

GO BUILD TENNESSEE ACT [EFFECTIVE UNTIL JULY 1, 2024]

Section
4-41-101. Short title. [Effective until July 1, 2024.]
4-41-102. Chapter definitions. [Effective until July 1, 2024.]
4-41-103. Creation of Go Build Tennessee Program — Administration by corporation — Composition of corporation. [Effective until July 1, 2024.]
4-41-104. Authority to enter contractual and promotional agreements — Permitted expenditures. [Effective until July 1, 2024.]
4-41-105. Go Build Account created. [Effective until July 1, 2024.]
4-41-106. Duties and powers of corporation. [Effective until July 1, 2024.]
4-41-107. Transfer of revenue from account to corporation. [Effective until July 1, 2024.]
4-41-108. Payment of expenses from moneys transferred from account to corporation. [Effective until July 1, 2024.]
4-41-109. Reporting requirements. [Effective until July 1, 2024.]
4-41-110. Annual audit. [Effective until July 1, 2024.]
4-41-111. Repealer. [Effective until July 1, 2024.]

4-41-101. Short title. [Effective until July 1, 2024.]

This chapter shall be known and may be cited as the "Go Build Tennessee Act."

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the

need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-102. Chapter definitions. [Effective until July 1, 2024.]

As used in this chapter:

(1) "Board" means the state board for licensing contractors, created by § 62-6-104; and

(2) "Corporation" means a nonprofit corporation, which shall be properly incorporated under the laws of this state and approved by the United States internal revenue service as an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)) by virtue of being an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-103. Creation of Go Build Tennessee Program — Administration by corporation — Composition of corporation. [Effective until July 1, 2024.]

(a) There is created the Go Build Tennessee Program, referred to in this chapter as "the program."

(b) The program shall be implemented and administered by a corporation, whose duties shall include, but not be limited to, securing funding to promote and foster the development of a comprehensive statewide program designed to attract and increase career opportunities for secondary and postsecondary students in the construction industry.

(c) The corporation shall be comprised of an equal number of representatives of commercial and industrial building contractors and subcontractors, residential building contractors and subcontractors, and road building contractors and subcontractors.

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-104. Authority to enter contractual and promotional agreements — Permitted expenditures. [Effective until July 1, 2024.]

The corporation may enter into contractual and promotional agreements necessary to effectively stimulate the program for the purposes of educating persons regarding the construction industry and recruiting persons for careers in the industry. The corporation's expenditures may include, but are not limited to, the following:

(1) Print, digital, and radio and television advertising;

(2) Promotional materials;

(3) Media campaigns;
(4) Videos;
(5) Brochures;
(6) Website development and maintenance; and
(7) Database development and maintenance.

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-105. Go Build Account created. [Effective until July 1, 2024.]

(a) To fund the program, there is created within the state board for licensing contractors a Go Build Account, referred to in this chapter as "the account." Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the account.

(b) A minimum of fifty percent (50%) of the total fiscal year fund balance resulting from contractor licensing revenue collected pursuant to title 62, chapter 6, part 1, after expenditures, shall be transferred by the board to the account, to be allocated to the corporation solely for the implementation, administration, and management of the program. This transfer shall occur on an annual basis in accordance with § 4-41-107.

(c) The board, in consultation with the corporation, may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, for disbursing the funds for the program, as necessary, pursuant to subsection (b).

(d) There shall be participation and inclusion of the commissioner of labor and workforce development or the commissioner's designee in the board's administration and implementation of this chapter, including the provision of input from the commissioner or the commissioner's designee related to labor market information, safety and health, and the development of performance metrics consistent with industry growth indicators.

History.
Acts 2015, ch. 500, § 1; 2018, ch. 786, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-106. Duties and powers of corporation. [Effective until July 1, 2024.]

(a) The corporation shall implement the program to promote and encourage the recruitment of potential construction workers, and to encourage the development of training programs and create opportunities for new, skilled construction workers in this state.

(b) The corporation may cooperate with state and local governments, private organizations, and citizens, as it plans and engages in activities related

to the program. In addition to the funds received pursuant to § 4-41-105(b), the corporation may receive funds from individuals, businesses, governmental entities, foundation grants, and the state as appropriated by the general assembly.

(c) All costs to underwrite the corporation's activities related to the program shall be paid from revenues of the corporation, and no state employee or any other person associated with the corporation shall benefit from the expenditures, either directly or indirectly.

(d) The corporation may exercise all powers authorized pursuant to the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68.

(e) The corporation may request assistance from any agency of state government, subject to existing statutes, rules, and policies.

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-107. Transfer of revenue from account to corporation. [Effective until July 1, 2024.]

Beginning in the first full quarter of fiscal year 2015-2016 and in the first quarter of every subsequent fiscal year, the board shall transfer revenue from the account to the corporation to be allocated in the manner set forth in § 4-41-105(b).

History.
Acts 2015, ch. 500, § 1; 2018, ch. 786, § 3.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-108. Payment of expenses from moneys transferred from account to corporation. [Effective until July 1, 2024.]

The corporation shall pay expenses incurred by the corporation for the administration of the program from moneys transferred from the account to the corporation pursuant to § 4-41-105(b).

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-109. Reporting requirements. [Effective until July 1, 2024.]

(a) The corporation shall submit quarterly reports to include acceptable fiscal accounting practices and performance accountability metrics to the commissioner of labor and workforce development. The commissioner shall have oversight authority over the corporation's performance accountability and shall determine and establish required accountability metrics.

(b) The corporation shall submit an annual report to the governor, the speaker of the senate, and the speaker of the house of representatives that

includes a statement of its operations. The report shall be submitted within ninety (90) days after the end of the corporation's fiscal year.

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.
Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

4-41-110. Annual audit. [Effective until July 1, 2024.]

An independent audit of the program shall be performed annually by a certified, independent public accountant who shall be paid from fees collected by the corporation. The independent audit shall be submitted to the comptroller of the treasury.

History.
Acts 2015, ch. 500, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

Cross-References.
Repealer, § 4-41-111.

4-41-111. Repealer. [Effective until July 1, 2024.]

This chapter is hereby repealed on July 1, 2024.

History.
Acts 2015, ch. 500, § 1; 2018, ch. 786, § 2.

Compiler's Notes.
For the Preamble to the act concerning the need to attract skilled construction workers, see Acts 2015, ch. 500.

CHAPTER 42

SANCTUARY POLICIES PROHIBITED

Section
4-42-101. Compliance with federal immigration laws.
4-42-102. Chapter definitions.
4-42-103. Enactment of sanctuary policy prohibited.
4-42-104. Complaint — Injunction — Time for compliance — Violation.

4-42-101. Compliance with federal immigration laws.

The general assembly finds, determines, and declares that:

(1) Because the matters contained in this chapter have important statewide ramifications for compliance with and enforcement of federal immigration laws and for the welfare of all citizens in this state, these matters are of statewide concern;

(2) Allowing illegal immigrants to reside within this state undermines federal immigration laws and state laws allocating available resources; and

(3) The attorney general and reporter and all appropriate state law enforcement agencies are to vigorously pursue all federal moneys to which the state may be entitled for the reimbursement of moneys spent to comply with federal immigration laws.

History.
Acts 2018, ch. 973, § 1.

Compiler's Notes.
Acts 2018, ch. 973, § 1 enacted a new chapter 59, §§ 4-59-101 — 4-59-104; however, the enactment by Acts 2018, ch. 973, § 1 was designated as chapter 42, §§ 4-42-101 — 4-42-104 by authority of the Code Commission.

Acts 2018, ch. 973, § 6 (a) The act, which enacted this section, shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens. (b) In complying with the requirements of this act, no law enforcement officer shall consider an individual's race, color, or national origin, except to the extent permitted by the United States or Tennessee constitution, and federal law.

4-42-102. Chapter definitions.

As used in this chapter:

(1) "Law enforcement agency":

(A) Means an agency in this state charged with enforcement of state or federal laws, or with managing custody of detained persons in this state, and includes, but is not limited to, state police, campus police, and the department of safety; and

(B) Includes officials, representatives, agents, and employees of an agency described in subdivision (1)(A);

(2) "Official" means an agent, employee, member, or representative of a state governmental entity, but does not mean the attorney general and reporter;

(3) "Sanctuary policy" means any directive, order, ordinance, resolution, practice, or policy, whether formally enacted, informally adopted, or otherwise effectuated, that:

(A) Limits or prohibits any state governmental entity or official from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien;

(B) Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of this state in violation of federal law;

(C) Violates 8 U.S.C. § 1373;

(D) Restricts in any way, or imposes any conditions on, a state or local governmental entity's cooperation or compliance with detainers from the United States department of homeland security, or other successor agency, to maintain custody of any alien or to transfer any alien to the custody of the United States department of homeland security, or other successor agency;

(E) Requires the United States department of homeland security, or other successor agency, to obtain a warrant or demonstrate probable cause before complying with detainers from the department to maintain custody of any alien or to transfer any alien to its custody; or

(F) Prevents law enforcement agencies from inquiring as to the citizenship or immigration status of any person; and

(4) "State governmental entity" means any state agency, bureau, commission, council, department, law enforcement agency, or unit thereof, but does not mean the office of the attorney general and reporter.

History.
Acts 2018, ch. 973, § 1.

Compiler's Notes.
Acts 2018, ch. 973, § 1 enacted a new chapter

59, §§ 4-59-101 — 4-59-104; however, the enactment by Acts 2018, ch. 973, § 1 was designated as chapter 42, §§ 4-42-101 — 4-42-104 by authority of the Code Commission.

Acts 2018, ch. 973, § 6 (a) The act, which enacted this section, shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens. (b) In complying with the requirements of this act, no law enforcement officer shall consider an individual's race, color, or national origin, except to the extent permitted by the United States or Tennessee constitution, and federal law.

4-42-103. Enactment of sanctuary policy prohibited.

No state governmental entity or official shall adopt or enact a sanctuary policy. A state governmental entity that adopts or enacts a sanctuary policy is ineligible to enter into any grant contract with the department of economic and community development until the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

History.

Acts 2018, ch. 973, § 1.

Compiler's Notes.

Acts 2018, ch. 973, § 1 enacted a new chapter 59, §§ 4-59-101 — 4-59-104; however, the enactment by Acts 2018, ch. 973, § 1 was designated as chapter 42, §§ 4-42-101 — 4-42-104 by authority of the Code Commission.

Acts 2018, ch. 973, § 6 (a) The act, which enacted this section, shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens. (b) In complying with the requirements of this act, no law enforcement officer shall consider an individual's race, color, or national origin, except to the extent permitted by the United States or Tennessee constitution, and federal law.

4-42-104. Complaint — Injunction — Time for compliance — Violation.

(a) A person residing in a municipality or county who believes a state governmental entity or official has violated § 4-42-103 may file a complaint in chancery court in that person's county of residence.

(b) The person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of § 4-42-103 has occurred.

(c) If the court finds the state governmental entity or official is in violation of § 4-42-103, the court shall issue a writ of mandamus against the entity or official ordering the entity or official to comply with § 4-42-103, enjoin the entity or official from further interference, and take other action to ensure compliance as is within the jurisdiction of the court.

(d) A state governmental entity or official has no less than one hundred twenty (120) days from the date of the court's order to comply with the order. If, after one hundred twenty (120) days, the entity or official has not complied with the court's order, the court may take whatever action necessary to enforce compliance.

(e) Upon a finding by the court that a state governmental entity or official has adopted or enacted a sanctuary policy, the state governmental entity, or the entity to which the official belongs, becomes ineligible to enter into any grant contract with the department of economic and community development. Ineligibility commences on the date the court finds that the state governmental entity or official is in violation of § 4-42-103 and continues until such time that the court certifies that the sanctuary policy is repealed, rescinded, or otherwise no longer in effect.

History.
Acts 2018, ch. 973, § 1.

Compiler's Notes.
Acts 2018, ch. 973, § 1 enacted a new chapter 59, §§ 4-59-101 — 4-59-104; however, the enactment by Acts 2018, ch. 973, § 1 was designated as chapter 42, §§ 4-42-101 — 4-42-104 by authority of the Code Commission.

Acts 2018, ch. 973, § 6 (a) The act, which enacted this section, shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens. (b) In complying with the requirements of this act, no law enforcement officer shall consider an individual's race, color, or national origin, except to the extent permitted by the United States or Tennessee constitution, and federal law.

CHAPTER 43

OFFICE OF STATE GEOGRAPHER

Section
4-43-101. Creation.
4-43-102. Appointment — Term of office.
4-43-103. Qualifications.
4-43-104. Duties.
4-43-105. Service without staff, expenses or salary.

4-43-101. Creation.

There is hereby created the office of state geographer.

History.
Acts 1993, ch. 274, § 1.

4-43-102. Appointment — Term of office.

The state geographer shall be appointed by the governor to serve a term of three (3) years and may be reappointed to serve additional terms. The state geographer shall serve at the pleasure of the governor and shall report to the governor or the governor's designee and to the appropriate official of any agency for which such geographer has contracted to perform work.

History.
Acts 1993, ch. 274, § 2.

4-43-103. Qualifications.

The state geographer shall hold a graduate degree in geography, have the confidence of professional colleagues and possess a record of public service.

History.
Acts 1993, ch. 274, § 3.

4-43-104. Duties.

The state geographer shall be available at all times to serve as a consultant, advisor or director of research on geographic matters of interest to, and at the request of, appropriate officials in state government on a task-by-task contract basis.

History.
Acts 1993, ch. 274, § 4.

4-43-105. Service without staff, expenses or salary.

The state geographer shall serve without staff, expenses, or salary.

History.
Acts 1993, ch. 274, § 5.

CHAPTER 44

TENNESSEE COMMISSION FOR THE UNITED STATES SEMIQUINCENTENNIAL COMMISSION ACT [EFFECTIVE UNTIL DECEMBER 31, 2027]

Section
4-44-101. Short title. [Effective until December 31, 2027.]
4-44-102. Part definition. [Effective until December 31, 2027.]
4-44-103. Establishment. [Effective until December 31, 2027.]
4-44-104. Membership. [Effective until December 31, 2027.]
4-44-105. Terms of members — Vacancy. [Effective until December 31, 2027.]
4-44-106. Meetings. [Effective until December 31, 2027.]
4-44-107. Duties of the commission. [Effective until December 31, 2027.]
4-44-108. Development of plan and overall program for event. [Effective until December 31, 2027.]
4-44-109. Comprehensive report containing specific recommendations for the commemoration. [Effective until December 31, 2027.]
4-44-110. Attachment to department of tourist development — Assistance of agencies of state government. [Effective until December 31, 2027.]
4-44-111. Gifts and donations. [Effective until December 31, 2027.]
4-44-112. Authority of the commission. [Effective until December 31, 2027.]
4-44-113. Property acquired by the commission — Disposition. [Effective until December 31, 2027.]
4-44-114. Expense reimbursement for commission members — Appointment of executive director and other personnel. [Effective until December 31, 2027.]
4-44-115. Annual report. [Effective until December 31, 2027.]
4-44-116. Repealer. [Effective until December 31, 2027.]

4-44-101. Short title. [Effective until December 31, 2027.]

This chapter shall be known and may be cited as the "Tennessee Commission for the United States Semiquincentennial Commission Act."

History.
Acts 2019, ch. 384, § 1.

Code Commission Notes. Former chapter 44, §§ 4-44-101 – 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-102. Part definition. [Effective until December 31, 2027.]

As used in this chapter, "Commission" means the Tennessee commission for the United States semiquincentennial commission.

History.
Acts 2019, ch. 384, § 2.

Code Commission Notes. Former chapter 44, §§ 4-44-101 – 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-103. Establishment. [Effective until December 31, 2027.]

The commission is established to plan, encourage, develop, and coordinate the commemoration of the 250th anniversary of the founding of the United States, and recognize Tennessee's integral role in that event and the impact of its people on the nation's past, present, and future.

History.
Acts 2019, ch. 384, § 3.

Code Commission Notes. Former chapter 44, §§ 4-44-101 – 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-104. Membership. [Effective until December 31, 2027.]

The commission consists of thirteen (13) ex officio voting members as follows:

(1) The commissioner of tourist development;

(2) The state historian;

(3) The executive director of the Tennessee historical society;

(4) The executive director of the Tennessee historical commission;

(5) The state librarian and archivist;

(6) The president of the Tennessee Sons of the American Revolution;

(7) The state regent of the Tennessee Society, Daughters of the American Revolution;

(8) Two (2) members of the house of representatives, to be appointed by the speaker of the house of representatives;

(9) Two (2) members of the senate, to be appointed by the speaker of the senate;

(10) The museum executive director of the state museum; and

(11) The executive director of the East Tennessee historical society.

History.
Acts 2019, ch. 384, § 4.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-105. Terms of members — Vacancy. [Effective until December 31, 2027.]

Members are appointed for the duration of the commission, but serve only so long as they remain in their official position as described in § 4-44-104. A vacancy on the commission does not affect the powers of the commission and is filled in the same manner as the original appointment.

History.
Acts 2019, ch. 384, § 5.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-106. Meetings. [Effective until December 31, 2027.]

Meetings of the commission are held throughout the state at times and locations to be determined by the chair, who is selected by a majority vote of the commission and may serve up to two (2) consecutive two-year terms. The first meeting of the commission is to be called by the commissioner of tourist development. A majority of the members of the commission constitutes a quorum.

History.
Acts 2019, ch. 384, § 6.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-107. Duties of the commission. [Effective until December 31, 2027.]

The commission shall:

(1) Plan, coordinate, and implement a program to commemorate the 250th anniversary of the founding of the United States in the year 2026, specifically highlighting the role of Tennessee and Tennesseans in, and the events succeeding, the historic event; and

(2) Coordinate with federal, state, and local agencies on infrastructural improvements and projects to welcome regional, national, and international tourists.

History.
Acts 2019, ch. 384, § 7.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-108. Development of plan and overall program for event. [Effective until December 31, 2027.]

In developing the plan and overall program for the event, the commission:

(1) Shall give due consideration to related plans and programs developed by federal, state, local, and private groups;

(2) May designate special committees with representatives from groups described in subdivision (1) to plan, develop, and coordinate specific activities;

(3) Shall hold public meetings to solicit the input of citizens throughout the state in developing programs for the semiquincentennial. The meetings shall be held within ninety (90) days of the commission's first meeting and throughout the commission's existence;

(4) Shall showcase all counties in this state;

(5) Shall draw attention to the achievements, struggles, honors, innovations, and impacts of all people in this state; and

(6) Shall clearly delineate all expenses incurred by the commission in developing the program.

History.
Acts 2019, ch. 384, § 8.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-109. Comprehensive report containing specific recommendations for the commemoration. [Effective until December 31, 2027.]

(a) No later than one (1) year after July 1, 2019, the commission shall submit a comprehensive report to the governor, the speaker of the senate, and the speaker of the house of representatives that contains the commission's specific recommendations for the commemoration of the 250th anniversary of the founding of the United States and related events.

(b) The report must include:

(1) A detailed timeline of the commission's plan for the event through 2027;

(2) The commission's recommendations for the allocation of costs among public and private entities that provide financial and administrative assistance to the commission;

(3) The projected number of jobs created through the implementation of the commission's plan and overall program;

(4) The projected economic impact of the implementation of the commission's plan and overall program;

(5) The geographic impact of the commission's plan and overall program on all counties of this state;

(6) A plan for improvements, if any, to the infrastructure of the state necessary to ensure the success of the commission's plan and overall program; and

(7) Outputs and outcomes against which progress and success of the commission's plan and overall program can be measured.

(c) The report may include recommendations for legislation necessary to effectuate the plan and overall program.

(d) The commission shall make the report available to the public on the commission's internet website.

History.
Acts 2019, ch. 384, § 9.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-110. Attachment to department of tourist development — Assistance of agencies of state government. [Effective until December 31, 2027.]

The commission is administratively attached to the department of tourist development. All appropriate agencies of state government shall provide assistance to the commission upon request of the commission.

History.
Acts 2019, ch. 384, § 10.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Department of tourist development, § 4-3-2201 et seq.
Repealer, § 4-44-116.

4-44-111. Gifts and donations. [Effective until December 31, 2027.]

The commission may accept, use, and dispose of gifts and donations of money, property, or personal services. Information relating to the gifts must be enumerated and submitted to the Tennessee ethics commission each quarter and must be made available to the public on the commission's internet website.

History.
Acts 2019, ch. 384, § 11.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-112. Authority of the commission. [Effective until December 31, 2027.]

(a) The commission may:

(1) Procure supplies, services, and property;

(2) Enter into contracts;

(3) Expend, in furtherance of this chapter, funds donated or received in pursuance of contracts entered into under this chapter; and

(4) Take action as necessary to enable the commission to effectuate the purposes of this chapter.

(b) Any action taken pursuant to subsection (a) must first be approved by majority vote of the commission.

History.
Acts 2019, ch. 384, § 12.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-113. Property acquired by the commission — Disposition. [Effective until December 31, 2027.]

Property acquired by the commission that remains after the termination of the commission may be designated by an act of the general assembly for donation to local municipalities or state agencies.

History.
Acts 2019, ch. 384, § 13.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-114. Expense reimbursement for commission members — Appointment of executive director and other personnel. [Effective until December 31, 2027.]

(a) Commission members will receive no compensation for their work with the commission but may receive reimbursement for travel expenses incurred in attending meetings of the commission in accordance with the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(b)(1) The chair of the commission may appoint an executive director and other personnel necessary for the commission to perform its powers and duties, subject to the approval of a majority vote of the entire membership of the commission.

(2) No person appointed or employed under this chapter is eligible to participate in the state retirement system solely on the basis of such appointment to or employment with the commission.

History.
Acts 2019, ch. 384, § 14.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-115. Annual report. [Effective until December 31, 2027.]

The commission shall submit an annual report to the governor and the general assembly detailing the commission's activities on or before December 31 of each year. The report must include an accounting of funds received and expended during the year covered by the report, the outputs and outcomes achieved, and whether those achievements meet the commission's plan and overall program goals. The commission shall make the report available to the public on the commission's website.

History.
Acts 2019, ch. 384, § 15.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

Cross-References.
Repealer, § 4-44-116.

4-44-116. Repealer. [Effective until December 31, 2027.]

This chapter shall be repealed and the commission shall cease to exist on December 31, 2027.

History.
Acts 2019, ch. 384, § 16.

Code Commission Notes. Former chapter 44, §§ 4-44-101 — 4-44-109, concerning the 1996 Tennessee bicentennial commission, was deemed obsolete due to the termination of the commission, effective June 30, 1997.

CHAPTER 45

COOPERATIVE DISABILITY INVESTIGATION

Section

4-45-101. Tennessee office of cooperative disability investigation. [Effective until July 1, 2024.]
4-45-102. Authority of division. [Effective until July 1, 2024.]
4-45-103. Subpoenas — Production of documents. [Effective until July 1, 2024.]
4-45-104. Special agents. [Effective until July 1, 2024.]
4-45-105. Confidentiality of records — Providing division access to data. [Effective until July 1, 2024.]
4-45-106. Report on division's performance. [Effective until July 1, 2024.]
4-45-107. Final report on division's operations. [Effective until July 1, 2024.]
4-45-108. Repealer. [Effective until July 1, 2024.]

4-45-101. Tennessee office of cooperative disability investigation. [Effective until July 1, 2024.]

(a)(1) There is created a Tennessee office of cooperative disability investigation, referred to in this chapter as the "division".

(2) The division:

(A) Is administratively attached to the department of finance and administration and the state of Tennessee office of inspector general, and may employ up to five (5) staff persons;

(B) Is headed by a special agent in charge, who also serves as an agent for investigative purposes;

(C) Is separate and distinct from any other bureau or agency in the state, and works primarily with the United States social security administration - cooperative disability investigation unit; and

(D) Shall report quarterly to the chair of the health and welfare committee of the senate, the chair of the health committee of the house of representatives, the chair of the government operations committee of the senate, and the chair of the government operations committee of the house of representatives on the number of disability cases investigated, the results of those investigations, and other matters the general assembly may deem relevant to the function of the division.

(b) The division is a temporary agency of state law enforcement officers, known as special agents, who shall work solely with the United States social security administration - cooperative disability investigation unit, for the purpose of saving taxpayer funds by investigating disability claims under the United States social security administration's Title II and Title XVI programs that state disability examiners believe are suspicious.

(c) The division shall enter into a memorandum of understanding with the United States social security administration specifying that all fiscal responsibilities needed to fund and operate the division, including, but not limited to, salaries, overtime, insurance benefits, retirement benefits, paid leave, operating costs, and personal duty equipment must be provided by the United States social security administration. State funds must not be used to fund or operate the division. If the United States social security administration fails to provide the funding needed to fund and operate the division at any time prior to July 1, 2024, then the division ceases to exist.

(d) State special agents who work with the United States social security

administration - cooperative disability investigation unit team shall investigate allegations of disability fraud. Upon completion of an investigation, a report detailing the investigation must be sent to the disability determination services, where disability determination services staff serves as the ultimate decision-making entity in determining whether a person is eligible to receive a monthly disability benefit payment.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-102. Authority of division. [Effective until July 1, 2024.]

The division has the authority to:

(1) Investigate the allegation of disability fraud by conducting interviews of the applicant and third parties and conducting surveillance on those parties;

(2) Investigate civil and criminal fraud and abuse, and investigate other violations of state criminal law;

(3) Cooperate with other law enforcement agencies, and where a preliminary investigation of fraud and abuse by a provider establishes a sufficient basis to warrant a full investigation, refer matters to the appropriate enforcement authority for criminal prosecution;

(4) Refer matters to the appropriate enforcement authorities for civil proceedings of funds that have been inappropriately paid by the disability program, including referral to the attorney general for civil recovery; and

(5) Cooperate with other state agencies to investigate disability fraud and abuse.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-103. Subpoenas — Production of documents. [Effective until July 1, 2024.]

(a)(1) When conducting an investigation or as part of a legal proceeding, the division has the authority to issue subpoenas to compel the attendance of witnesses to examine persons under oath, and to compel persons, firms, or corporations to produce information, including books, accounts, papers, records, and other relevant documents.

(2) If a person, firm, or corporation fails to attend or fails to produce information as prescribed in subdivision (a)(1), then, after giving reasonable notice to the person, firm, or corporation, the division may seek judicial enforcement of the subpoena by filing, through the attorney general, a petition with the circuit or chancery court of Davidson County or of the

judicial district in which the person, firm, or corporation resides. The petition must incorporate, or be accompanied by, a certification regarding the notice given and the failure of the person, firm, or corporation to attend or produce the information.

(3) Upon the filing of a petition under subdivision (a)(2) in proper form, the court shall order the person, firm, or corporation named in the petition to appear and show cause why they should not comply with the subpoena or be held in contempt for failure to comply. The court may employ all judicial power as provided by law to compel compliance with the subpoena, including those powers granted in §§ 29-9-103 – 29-9-106. The court may impose costs and sanctions against such person, firm, or corporation, in the same manner and on the same basis as may be imposed for failure to comply with judicially issued subpoenas under the Tennessee Rules of Civil Procedure.

(4) The court may order the person, firm, or corporation to comply, and has the authority to punish the persons and entities for each day they fail to comply with an order as a separate contempt of court.

(5) The subpoena enforcement remedies set forth in this subsection (a) are cumulative, and not exclusive, of other remedies provided by law for the enforcement of such subpoenas.

(b) The division has the authority to compel the production of current and former employment records as part of an investigation. Employment records include employment details, wages, and insurance information of disability applicants and enrollees. Employment records must be open to inspection and are subject to being copied by a special agent at any reasonable time and as often as may be necessary. The division also has the authority to compare information reported to the United States social security administration and the bureau of TennCare by applicants or enrollees with data maintained by the credit bureaus.

(c) The complete patient record of any applicant for disability benefits must be made available to the division upon request. The record may include any services, goods, and pharmaceuticals dispensed regardless of the payment source. Records accessed during an investigation must be protected in accordance with state and federal privacy laws.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-104. Special agents. [Effective until July 1, 2024.]

(a) The staff of the division must include law enforcement officers, as defined in § 39-11-106, who shall be known as special agents and must be qualified in accordance with § 38-8-106, and must have successfully completed a training course approved by the Tennessee peace officer standards and training commission. Special agents must undergo a federal background investigation conducted by the United States social security administration -

office of inspector general, which must also approve any selection and appointment of personnel to the division.

(b) A duly authorized special agent who has been designated by the division to enforce this chapter is authorized and empowered to go armed while on active duty engaged in enforcing this chapter. A special agent is also considered a commissioned qualified criminal investigator for the purposes of the federal Law Enforcement Officers Safety Act of 2004 (Pub. L. No. 108-277), and is directed, pursuant to § 39-17-1315(a)(1), to carry firearms at all times, regardless of regular duty hours or assignments. Special agents are also empowered to execute search warrants and do all acts incident thereto in the same manner as search warrants may be executed by sheriffs and other peace officers.

(c) Special agents of the division have the authority to make arrests for state felony or misdemeanor violations and the authority to make traffic stops in an emergency situation where the safety of the public is in jeopardy.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-105. Confidentiality of records — Providing division access to data. [Effective until July 1, 2024.]

(a) Records obtained pursuant to this chapter must be treated as confidential investigative records of the division and must not be open to public inspection.

(b) Notwithstanding other law to the contrary, a person or entity is not subject to any civil or criminal liability for providing the division with access to data as required by this chapter.

(c) This chapter does not require a person or entity to create new records or data that did not exist at the time of the request. However, a person or entity shall not destroy existing data after having been put on notice that access to the data is required pursuant to this section.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-106. Report on division's performance. [Effective until July 1, 2024.]

Representatives from the cooperative disability investigations program shall appear before the government operations committee of the senate and the government operations committee of the house of representatives by December 31, 2023, to report on all aspects of the division's performance.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-107. Final report on division's operations. [Effective until July 1, 2024.]

No later than January 31, 2023, the division shall submit a final report on its overall operations to the legislative committees listed in § 4-45-101(a)(2)(D). The division shall also provide the legislative committees with any other information related to the function of the division upon request.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

Cross-References.
Repealer, § 4-45-108.

4-45-108. Repealer. [Effective until July 1, 2024.]

This chapter is repealed July 1, 2024.

History.
Acts 2021, ch. 546, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prevention of disability fraud, please see Acts 2021, ch. 546.

Effective Dates.
Acts 2021, ch. 546, § 2. July 1, 2021.

CHAPTER 46

STATE MODEL EMPLOYER (SAME) PROGRAM

Section
4-46-101. Chapter definitions.
4-46-102. Establishment of SAME program for individuals with disabilities — Purpose.
4-46-103. Administration of SAME program — Duties of commissioner of human resources.

4-46-101. Chapter definitions.

As used in this chapter:

(1) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; a record of the impairment; or being regarded as having an impairment; and

(2) "SAME program" means the state as a model employer program established pursuant to this chapter.

History.
Acts 2021, ch. 575, § 1.

Code Commission Notes. Acts 2021, ch. 575, § 1 enacted a new chapter 45, §§ 4-45-101 – 4-45-103, but the chapter has been redesignated as chapter 46, §§ 4-46-101 – 4-46-103, by authority of the Code Commission.

Compiler's Notes.
Acts 2021, ch. 575, § 2 provided that the commissioner of human resources may promul-

gate rules to implement the provisions of this act. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Effective Dates.
Acts 2021, ch. 575, § 3. May 27, 2021.

4-46-102. Establishment of SAME program for individuals with disabilities — Purpose.

(a) There is established the SAME program for individuals with disabilities.

(b) The purpose of the SAME program is to ensure that state agencies and departments design and proactively implement best, promising, and emerging policies, practices, and procedures related to the recruitment, hiring, advancement, and retention of qualified individuals with disabilities.

History.
Acts 2021, ch. 575, § 1.

Code Commission Notes. Acts 2021, ch. 575, § 1 enacted a new chapter 45, §§ 4-45-101 – 4-45-103, but the chapter has been redesignated as chapter 46, §§ 4-46-101 – 4-46-103, by authority of the Code Commission.

Compiler's Notes.
Acts 2021, ch. 575, § 2 provided that the commissioner of human resources may promulgate rules to implement the provisions of this act. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Effective Dates.
Acts 2021, ch. 575, § 3. May 27, 2021.

4-46-103. Administration of SAME program — Duties of commissioner of human resources.

(a) The commissioner of human resources shall administer the SAME program.

(b) The duties of the commissioner of human resources in administering the SAME program include, but are not limited to, the following:

(1) Adoption of rules, policies, and directives;

(2) Provision of training and technical assistance regarding best, promising, and emerging policies, practices, and procedures; and

(3) Development of voluntary self-evaluation and other standard forms and templates for the submission and tracking of evaluation reports.

History.
Acts 2021, ch. 575, § 1.

Code Commission Notes. Acts 2021, ch. 575, § 1 enacted a new chapter 45, §§ 4-45-101 – 4-45-103, but the chapter has been redesignated as chapter 46, §§ 4-46-101 – 4-46-103, by authority of the Code Commission.

Compiler's Notes.
Acts 2021, ch. 575, § 2 provided that the commissioner of human resources may promulgate rules to implement the provisions of this act. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Effective Dates.
Acts 2021, ch. 575, § 3. May 27, 2021.

CHAPTER 47

[RESERVED]

CHAPTER 48

TENNESSEE COMMISSION ON HOLOCAUST EDUCATION

Section
4-48-101. Creation.
4-48-102. Membership.
4-48-103. Term of office.
4-48-104. Expenses.
4-48-105. Chair.
4-48-106. Executive director.
4-48-107. Responsibilities and duties.
4-48-108. Cooperation by other state entities.
4-48-109. Not-for-profit corporation to further purposes of commission.

4-48-101. Creation.

The Tennessee commission on Holocaust education is created and established in the executive branch of the state government. It shall be independent, except for administration and finance.

History.
Acts 1996, ch. 946, § 2.

4-48-102. Membership.

The commission shall consist of members including: a senator appointed by the speaker of the senate and a representative appointed by the speaker of the house of representatives; the commissioner of education; a vice chancellor of the University of Tennessee and a vice president of the board of regents; and twelve (12) public members appointed by the governor. The public members shall be Tennessee residents, with due regard to broad geographic representation, who have served prominently as spokespersons for, or as leaders of organizations that serve members of, religious, ethnic, national heritage or social groups that were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence and other forms of human rights violations and persecution at the hands of the Nazis and their collaborators during the Nazi era, or they shall be residents who are experienced in the field of Holocaust education, or representative of liberators of victims of the Holocaust, such as veterans organizations.

History.
Acts 1996, ch. 946, § 3.

4-48-103. Term of office.

Each public member of the commission shall serve for a term of three (3) years. Public members shall be eligible for reappointment. They shall serve until the expiration of the term to which they were appointed and until their

successors are appointed and qualified. A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

History.
Acts 1996, ch. 946, § 4.

4-48-104. Expenses.

The members of the commission shall serve without compensation, but they shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties, in accordance with the comprehensive state travel regulations.

History.
Acts 1996, ch. 946, § 5.

4-48-105. Chair.

The commission shall have a chair appointed by the governor for a three-year term. It shall meet upon the call of the chair or of a majority of the commission members. The presence of a majority of the authorized membership of the commission shall be required for the conduct of official business.

History.
Acts 1996, ch. 946, § 6.

4-48-106. Executive director.

The commission shall appoint an executive director, who shall serve at its pleasure and shall be a person qualified by training and experience to perform the duties of the office.

History.
Acts 1996, ch. 946, § 7.

4-48-107. Responsibilities and duties.

The commission has the responsibility and duty to:

(1) Provide, based upon the collective knowledge and experience of its members, assistance and advice to the public and private schools, colleges and universities with respect to the implementation of Holocaust education and awareness programs;

(2) Meet with appropriate education officials and other interested public and private organizations, including service organizations, for the purpose of assisting with the planning, coordination or modification of courses of study dealing with the subject of the Holocaust;

(3) Survey and catalog the extent and breadth of Holocaust and genocide education presently being incorporated into the curricula and taught in the educational systems of the state and inventory those Holocaust memorials, exhibits and resources that could be incorporated in courses of study at various locations and other educational agencies in the development and implementation of Holocaust and genocide education programs. In further-

ance of this responsibility, the commission is authorized to contact and cooperate with existing Holocaust and genocide public or private nonprofit resource organizations. The commission may also act as a liaison concerning Holocaust and genocide education to members of the United States senate and house of representatives, the Tennessee senate and house of representatives and the United States Holocaust Memorial Museum;

(4) Compile a roster of individual volunteers who are willing to share their knowledge and experience in classrooms, seminars and workshops on the subject of the Holocaust. These volunteers may be survivors of the Holocaust, liberators of concentration camps, scholars, members of the clergy, community relations professionals and other persons who, by virtue of their experience or interest, have acquired personal or academic knowledge of the Holocaust;

(5) Coordinate events memorializing the Holocaust and seek volunteers who are willing and able to participate in commemorative events that will enhance public awareness of the significance of the Holocaust; and

(6) Prepare reports for the governor and the general assembly regarding its findings and recommendations to facilitate the inclusion of Holocaust studies and special programs memorializing the Holocaust in educational systems in the state.

History.
Acts 1996, ch. 946, § 8.

4-48-108. Cooperation by other state entities.

(a) The commission is authorized to call upon any department, office, division or agency of the state, to supply such data, program reports and other information, personnel and assistance as it deems necessary to discharge its responsibilities under this chapter.

(b) These departments, offices, divisions and agencies shall, to the extent possible and not inconsistent with any other law of this state, cooperate with the commission, and shall furnish it with such information, personnel and assistance as may be necessary or helpful to accomplish the purposes of this chapter.

History.
Acts 1996, ch. 946, § 9.

4-48-109. Not-for-profit corporation to further purposes of commission.

(a) The commission is hereby authorized to create a not-for-profit corporation to raise funds, develop, manage and implement the plans and programs of the commission relating to the Holocaust.

(b) The commission is authorized to select a name for the corporation. The corporation shall have its own board of directors, which shall consist of the members of the commission, a representative appointed by the governor, and a representative of the attorney general and reporter. The board may select its own chair with the approval of the chair of the commission.

(c) After proper incorporation, the not-for-profit corporation is authorized

and directed to apply for tax-exempt status under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

(d) In addition to funds received from the general public, the corporation may receive funds from the state at such times and in such amounts as appropriated by the general assembly to be used for its tax-exempt purposes.

(e) Upon its incorporation, the not-for-profit corporation shall be responsible for implementing such programs as the commission plans. The not-for-profit corporation may hire such support staff and name such advisory groups or steering committees as necessary to assist in the promotion, coordination, and implementation of and fundraising for the comprehensive program developed by the commission.

History.
Acts 1996, ch. 946, § 10.

CHAPTER 49

TENNESSEE SPORTS GAMING ACT [EFFECTIVE JANUARY 1, 2022; SEE COMPILER'S NOTES.]

Section

4-49-101. Short title. [Effective January 1, 2022; See Compiler's Notes.]
4-49-102. Chapter definitions. [Effective January 1, 2022; See Compiler's Notes.]
4-49-103. Restrictions on and regulation of licenses. [Effective January 1, 2022; See Compiler's Notes.]
4-49-104. Taxes — Collection — Disposition of taxes. [Effective January 1, 2022; See Compiler's Notes.]
4-49-105. Lottery corporation sports wagering advisory council — Creation — Membership — Terms. [Effective January 1, 2022; See Compiler's Notes.]
4-49-106. Powers and duties of corporation and board — Adoption of rules. [Effective January 1, 2022; See Compiler's Notes.]
4-49-107. Removal of member. [Effective January 1, 2022; See Compiler's Notes.]
4-49-108. Reports of council. [Effective January 1, 2022; See Compiler's Notes.]
4-49-109. Requirements for escrow account — Insurance — Cash-on-hand. [Effective January 1, 2022; See Compiler's Notes.]
4-49-110. Financial practices — Audits of licensees — Post-employment restrictions. [Effective January 1, 2022; See Compiler's Notes.]
4-49-111. Persons authorized to engage in sports wagering. [Effective January 1, 2022; See Compiler's Notes.]
4-49-112. Persons ineligible to place a bet or wager. [Effective January 1, 2022; See Compiler's Notes.]
4-49-113. Wagers as contracts. [Effective January 1, 2022; See Compiler's Notes.]
4-49-114. Wagers prohibited. [Effective January 1, 2022; See Compiler's Notes.]
4-49-115. Integrity of sports wagering — Public interest. [Effective January 1, 2022; See Compiler's Notes.]
4-49-116. Official league data. [Effective January 1, 2022; See Compiler's Notes.]
4-49-117. Applying for licenses — Fees. [Effective January 1, 2022; See Compiler's Notes.]
4-49-118. Restrictions on licensees. [Effective January 1, 2022; See Compiler's Notes.]
4-49-119. Responsible sports wagering. [Effective January 1, 2022; See Compiler's Notes.]
4-49-120. Persons prohibited from obtaining licenses. [Effective January 1, 2022; See Compiler's Notes.]
4-49-121. Transfer of licenses. [Effective January 1, 2022; See Compiler's Notes.]
4-49-122. House rules — Acceptance of wagers — Payouts. [Effective January 1, 2022; See Compiler's Notes.]
4-49-123. Inspections. [Effective January 1, 2022; See Compiler's Notes.]
4-49-124. Licensee reporting requirements — Compliance hearing. [Effective January 1, 2022; See Compiler's Notes.]

Section
4-49-125. Interactive sports wagering. [Effective January 1, 2022; See Compiler's Notes.]
4-49-126. Violations of chapter — Hearings — Administrative fines. [Effective January 1, 2022; See Compiler's Notes.]
4-49-127. Investigations by board. [Effective January 1, 2022; See Compiler's Notes.]
4-49-128. Appealing final actions of the board. [Effective January 1, 2022; See Compiler's Notes.]
4-49-129. Civil penalties. [Effective January 1, 2022; See Compiler's Notes.]
4-49-130. Transmission of sports information for purposes of sports wagering. [Effective January 1, 2022; See Compiler's Notes.]

4-49-101. Short title. [Effective January 1, 2022; See Compiler's Notes.]

This chapter shall be known and may be cited as the "Tennessee Sports Gaming Act."

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 27, 30; T.C.A. § 4-51-301.

Compiler's Notes.

Former § 4-51-301 was transferred to § 4-49-101 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act, the act took effect May 27, 2021.

4-49-102. Chapter definitions. [Effective January 1, 2022; See Compiler's Notes.]

As used in this chapter, unless the context otherwise requires:

(1) "Adjusted gross income" means the total of all money paid to a licensee as bets minus the total amount paid out to winning bettors over a specified period of time, which includes the cash equivalent of any merchandise or

thing of value awarded as a prize;

(2) "Bettor" means a person who is:

(A) Twenty-one (21) years of age or older;

(B) Physically present in this state when placing a wager with a licensee; and

(C) Not prohibited from placing a wager under § 4-49-112;

(3) "Bond" means a bond held in escrow for the purpose of maintaining adequate reserves to account for losses suffered by a licensee and owed to bettors;

(4) "Cheating" means improving the chances of winning or of altering the outcome by deception, interference, or manipulation of a sporting event or of any equipment, including software pertaining to or used in relation to the equipment, used for or in connection with the sporting event on which wagers are placed or are invited, including attempts and conspiracy to cheat;

(5) "Collegiate" means belonging to, or involving, a public or private institution of higher education;

(6) "Collegiate sporting event" means a sporting or athletics event involving a sports or athletics team of a public or private institution of higher education;

(7) "Council" means the sports wagering advisory council;

(8) "E-sport" means any multiplayer video game played competitively for spectators, either in-person or via remote connection, in which success principally depends upon the superior knowledge, training, experience, and adroitness of the players;

(9) "Fixed-odds betting" means bets made at predetermined odds or on the spread where the return to the bettor is unaffected by any later change in odds or the spread;

(10) "Future bet" means a wager made on the occurrence of an event in the future relating to a sporting event;

(11) "Interactive sports wagering" means placing a wager on a sporting event via the internet, a mobile device, or other telecommunications platform;

(12) "License" means a license to accept wagers from bettors on sporting events issued under § 4-49-117;

(13) "Licensee" means a person who holds a license issued under § 4-49-117;

(14) "Live betting" means a type of wager that is placed after the sporting event being wagered on has commenced and whose odds on events occurring are adjusted in real time;

(15) "Minor" means a person who is less than twenty-one (21) years of age;

(16) "Money line" means the fixed odds in relation to a dollar amount that a team or person participating in a sporting event will win outright, regardless of the spread;

(17) "Official league data" means statistics, results, outcomes, and other data related to a sporting event obtained pursuant to an agreement with the relevant governing body of a sport or sports league, organization, or association whose corporate headquarters are based in the United States, or an entity expressly authorized by such governing body to provide such information to licensees for purposes of live betting;

(18) "Online sports wagering platform" means the combination of hardware, software, and data networks used to manage, administer, or control sports wagering and any associated wagers accessible by any electronic means, including mobile applications and internet websites accessed via a mobile device or computer;

(19) "Pari-mutuel betting" means a type of bet in which all wagers on a particular occurrence are pooled and winnings are paid in accordance with the size of the pool and the number of winners;

(20) "Parlay bet" means a single wager that incorporates two (2) or more individual bets for purposes of earning a higher payout if each bet incorporated within the wager wins;

(21) "Professional sports team" means a major or minor league professional baseball, football, basketball, soccer, or hockey franchise, or a professional motor sport;

(22) "Proposition bet" means a wager made regarding the occurrence or nonoccurrence during a sporting event of an event that does not directly affect the final outcome of the sporting event;

(23) "Sporting event" means any professional sporting or athletic event, including motorsports and e-sports, any collegiate sporting or athletic event, or any Olympic sporting or athletic event sanctioned by a national or international organization or association. "Sporting event" does not include horse racing;

(24) "Sports governing body" means the organization, league, or association that oversees a sport and prescribes final rules and enforces codes of conduct with respect to such sport and participants therein;

(25) "Spread" means the predicted scoring differential between two (2) persons or teams engaged in a sporting event;

(26) "Supervisory employee" means a principal or employee having the authority to act on behalf of a licensee or whose judgment is being relied upon to manage and advance the business operations of a licensee;

(27) "Vendor" means a contractor, subcontractor, or independent contractor hired, or contracted with, by the council or a licensee for the purpose of facilitating the business of the council or licensee under this chapter; and

(28) "Wager" or "bet" means a sum of money that is risked by a bettor on the unknown outcome of one (1) or more sporting events, including, but not limited to, the form of fixed-odds betting, a future bet, live betting, a money line bet, pari-mutuel betting, parlay bet, pools, proposition bet, spread bet, or in any other form or manner as authorized by rule promulgated by the council.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 1, 27, 30; T.C.A. § 4-51-302.

Compiler's Notes.

Former § 4-51-302 was transferred to § 4-49-102 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corpora-

tion and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section; deleted "Tennessee education lottery corporation" preceding "sports wagering advisory council;" in the definition of "council"; in the definition of "vendor", substituted "council" for "corporation" twice and deleted the last sentence which read: " 'Vendor' does not include a lottery system vendor as that term is used under part 1 of this chapter"; and substituted "promulgated by the council" for "of the board" at the end of the definition of "wager".

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act, the act took effect May 27, 2021.

4-49-103. Restrictions on and regulation of licenses. [Effective January 1, 2022; See Compiler's Notes.]

A person issued a license to offer interactive sports wagering under this chapter is subject to all provisions of this chapter relating to licensure, regulation, and civil and criminal penalties.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 27, 30; T.C.A. § 4-51-303.

Compiler's Notes.

Former § 4-51-303 was transferred to § 4-49-103 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corpora-

tion shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-104. Taxes — Collection — Disposition of taxes. [Effective January 1, 2022; See Compiler's Notes.]

(a) It is a taxable privilege to offer sports wagering in this state under a license issued in accordance with this chapter. Notwithstanding any state law to the contrary, a licensee shall only pay a privilege tax on its adjusted gross income in accordance with this section.

(b) There is imposed upon the adjusted gross income of a licensee a privilege tax of twenty percent (20%).

(c) The tax imposed under this section must be paid monthly by a licensee based on its monthly adjusted gross income for the immediately preceding calendar month. The tax must be paid to the council in accordance with rules promulgated by the council.

(d) For the purpose of enforcing this chapter and ascertaining the amount of tax due under this section, the council may competitively procure the services of a vendor to provide a central accounting and reporting system, to ascertain all bets wagered minus the total amount paid out to winning bettors daily, and such other information as the council may require. All licensees shall utilize such central accounting and reporting system.

(e)(1) Eighty percent (80%) of the privilege tax collected under this section must be distributed by the council to the state treasurer for deposit into the lottery for education account created under § 4-51-111.

(2) Fifteen percent (15%) of the privilege tax collected under this section must be distributed by the council quarterly to the state treasurer for deposit into the general fund, to be remitted quarterly to each local government in this state on a per capita basis, as determined by population based on the last federal census. For purposes of calculating the allocation, the population of counties excludes the population of each municipality within the boundaries of the county. Funds remitted to a local government under this subdivision (e)(2) must be allocated to the county or city general fund, as applicable, to be used for local infrastructure projects, including, without limitation, transportation and road projects and public buildings.

(3) Five percent (5%) of the privilege tax collected under this section must be distributed by the council to the state treasurer and allocated to the department of mental health and substance abuse services to use in the manner prescribed by § 4-49-119.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 2, 27, 30; T.C.A. § 4-51-304.

Compiler's Notes.

Former § 4-51-304 was transferred to § 4-49-104 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section; substituted "council" for "corporation" wherever it appears in the section; deleted the last two sentences of (e)(1) which read: "Funds deposited under this subdivision (e)(1) must be accounted for separately by the corporation from funds collected by the corporation for the lottery. Section 4-51-111 is otherwise inapplicable to taxes collected and deposited under this subdivision (e)(1)."; and deleted "Notwithstanding § 4-51-111," from the beginning of (e)(2) and (e)(3).

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-105. Lottery corporation sports wagering advisory council — Creation — Membership — Terms. [Effective January 1, 2022; See Compiler's Notes.]

(a)(1) There is created the sports wagering advisory council to enforce this chapter and supervise compliance with laws relating to the regulation and control of wagering on sporting events in this state.

(2) The council shall hire an executive director to direct and oversee the day-to-day operations and management of sports gaming under this chapter and other employees as deemed necessary by the council to assist the executive director and carry out the duties of the council. The executive director will be vested with such powers and duties as specified by the council by rule.

(3) The council shall establish the salaries of the executive director and employees hired under this subsection (a) and such executive director and employees serve at the pleasure of the council.

(b) The council is composed of nine (9) members appointed as follows:

(1) Three (3) by the governor, with one (1) member from each grand division of this state;

(2) Three (3) by the speaker of the senate, with one (1) member from each grand division of this state; and

(3) Three (3) by the speaker of the house of representatives, with one (1) member from each grand division of this state.

(c) Prior to the appointment of a person to the council, the appointing authority shall submit the name of the potential member to the Tennessee bureau of investigation. The bureau shall conduct a criminal records check on all such persons pursuant to § 38-6-109. The bureau may contract with any other law enforcement agency to assist in such investigation. Such potential member shall supply a set of fingerprints upon request and in the manner requested by the investigating entity.

(d) The term of each member begins on July 1. For purposes of staggering the terms of the council, each appointing authority shall appoint one (1) member to a term of four (4) years, one (1) member to a term of three (3) years, and one (1) member to a term of (2) years.

(e) After the initial terms, the term of an appointed or reappointed member is four (4) years. However, the term of a reappointed member or a new appointee replacing an existing member begins on the day of the expiration of the prior term.

(f) Notwithstanding subsection (e), at the end of the member's term, the member shall continue to serve until a replacement is appointed by the appropriate appointing authority.

(g)(1) Each member of the council must:

(A) Be a citizen of the United States;

(B) Be, and remain, a resident of this state; and

(C) Possess and demonstrate honesty, integrity, and good character.

(2) A person is not eligible for appointment to the council if the person:

(A) Holds any elective office in state government;

(B) Is an officer or official of any political party;

(C) Has a direct pecuniary interest in the sports wagering or gaming industry;

(D) Has been convicted of a felony;

(E) Has been convicted of a misdemeanor involving gambling, theft, computer-related offenses, forgery, perjury, dishonesty, or unlawfully selling or providing a product or substance to a minor;

(F) Has been convicted of any violation under this chapter; or

(G) Has been convicted of any offense in a federal court, military court, or court of another state, territory, or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (g)(2)(D)–(F).

(h) In making appointments to the council, the appointing authorities shall strive to ensure that the council membership is diverse in educational background, ethnicity, race, gender, and geographic residency and has experience in:

(1) The sports industry;

(2) Accounting; and

(3) Law enforcement.

(i) A vacancy on the council must be filled for the balance of the unexpired term in the same manner as the original appointment.

(j) Five (5) members of the council constitute a quorum for the purposes of voting and conducting the business of the council.

(k) The council shall elect a chair from among its membership. The chair shall serve in that capacity for one (1) year and is eligible for reelection. The chair shall preside at all meetings and shall have all the powers and privileges of other members.

(l) The council shall meet not less than quarterly, and may hold additional regular and special meetings at the call of the chair.

(m) The members must be reimbursed for per diem and travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(n)(1) Meetings of the council are subject to the public meeting requirements prescribed in title 8, chapter 44, part 1; provided, that the council may meet virtually using an internet platform in emergency circumstances in a manner prescribed by rule of the council and in accordance with subdivision (n)(2).

(2) Virtual emergency meetings may only be conducted if the council:

(A) Not less than twenty-four (24) hours prior to the meeting, provides on its website public notice of the meeting;

(B) Provides adequate electronic or other notice to each licensee or permittee with an interest in the meeting, if applicable;

(C) Provides an audio or video feed of the meeting on its website which is accessible to the general public; and

(D) Provides a mechanism by which any licensee or permittee subject to disciplinary action at the meeting, if applicable, has the opportunity to provide testimony and submit evidence to the council members electronically.

(3) Disciplinary action taken against a licensee or permittee at a virtual emergency meeting under this subsection (n) is temporary until the council conducts a full investigative hearing on the matter in accordance with § 4-49-326 not later than five (5) business days after the conclusion of the virtual emergency meeting. If the council does not comply with this subdivision (n)(3), the disciplinary action of the council taken at the virtual emergency meeting is null and void.

(o) The council may from time to time convene an ad hoc advisory committee composed of nonmembers with particular expertise in an area or areas relative to sports gaming to:

(1) Advise the board of best practices with respect to sports wagering;

(2) Provide administrative and technical advice to the board with respect to sports wagering;

(3) Conduct research or perform studies relative to sports wagering; and

(4) Perform any other activities to assist the council in carrying out its duties.

(p) The council may, in its discretion, reimburse members of an ad hoc advisory committee convened under subsection (o) for per diem and travel expenses in accordance with the comprehensive travel rules as promulgated by

the department of finance and administration and approved by the attorney general and reporter.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 3–5, 27, 30; T.C.A. § 4-51-305.

Compiler's Notes.

Former § 4-51-305 was transferred to § 4-49-105 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section; rewrote (a) which read: "(a) There is created a lottery corporation sports wagering advisory council to assist the corporation with sports wagering activities."; substituted "at the call of the chair" for "at the call of the board" in (l); rewrote (n) which read: "(n) The council shall:

"(1) Advise the board of best practices with respect to sports wagering;

"(2) Provide administrative and technical assistance to the corporation with respect to sports wagering; and

"(3) Carry out any other duties of the council as prescribed by the board or this part."; and added (o) and (p).

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

4-49-106. Powers and duties of corporation and board — Adoption of rules. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council shall enforce this chapter and supervise compliance with laws and rules relating to the regulation and control of wagering on sporting events in this state.

(b) The council shall promulgate rules in accordance with this chapter and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 6, 27, 30; T.C.A. § 4-51-306.

Compiler's Notes.

Former § 4-51-306 was transferred to § 4-49-106 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section; substituted "council" for "corporation and board" in (a); and rewrote (b) which read: "The board shall promulgate rules in accordance with this part. Rules of the board promulgated under this part must be adopted, amended, or repealed in the same manner as the board adopts, amends, and repeals bylaws and regulations of the board for purposes of regulating the corporation's affairs and the conduct of corporate business."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-107. Removal of member. [Effective January 1, 2022; See Compiler's Notes.]

A member of the council may be removed from the council by the appointing authority if, in the opinion of the appointing authority, the member has committed misfeasance or malfeasance in office or neglect of duty.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30; T.C.A. § 4-51-307.

Compiler's Notes.

Former § 4-51-307 was transferred to § 4-49-107 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corpora-

tion and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-108. Reports of council. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council shall prepare and submit an annual report to the governor, the speaker of the senate, and the speaker of the house of representatives containing the following information:

(1) The number of active licensees;

(2) The aggregate gross and net revenue of all licensees; and

(3) The financial impact on this state and local governments as the result of the sports wagering industry in this state.

(b) The report prepared under subsection (a) must be submitted not later than September 30 of each year. A report submitted under subsection (a) may be submitted electronically.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 7, 30; T.C.A. § 4-51-308.

Compiler's Notes.

Former § 4-51-308 was transferred to § 4-49-108 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-109. Requirements for escrow account — Insurance — Cash-on-hand. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council shall prescribe by rule:

(1) The amount of a bond in escrow and the amount of cash that must be kept on hand to ensure that there exists adequate reserves to pay off bettors; and

(2) Any insurance requirements for a licensee.

(b) The licensee may maintain the bond at any bank lawfully operating in this state, and the licensee must be the beneficiary of any interest accrued thereon.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 7, 30; T.C.A. § 4-51-309.

Compiler's Notes.

Former § 4-51-309 was transferred to § 4-49-109 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain

valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-110. Financial practices — Audits of licensees — Post-employment restrictions. [Effective January 1, 2022; See Compiler's Notes.]

The council shall prescribe by rule:

(1) Minimum requirements by which each licensee must exercise effective control over its internal fiscal affairs, including, without limitation, requirements for:

(A) Safeguarding assets and revenues, including evidence of indebtedness;

(B) Maintenance of reliable records relating to accounts, transactions, profits and losses, operations, and events; and

(C) Global risk management;

(2) Requirements for internal and independent audits of licensees;

(3) The manner in which periodic financial reports must be submitted to the council from each licensee, including the financial information to be included in the reports;

(4) The type of information deemed to be confidential financial or proprietary information that is not subject to any reporting requirements under this chapter;

(5) Policies, procedures, and processes designed to mitigate the risk of cheating and money laundering; and

(6) Any post-employment restrictions necessary to maintain the integrity of sports wagering in this state.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 8, 27, 30; T.C.A. § 4-51-310.

Compiler's Notes.

Former § 4-51-310 was transferred to § 4-49-110 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advi-

sory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section and substituted "council" for "board" wherever it appears in the section.

Effective Dates.

Acts 2019, ch. 507, July 1, 2019; provided that, for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of this act, the act took effect on May 25, 2019. See Compiler's Notes.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-111. Persons authorized to engage in sports wagering. [Effective January 1, 2022; See Compiler's Notes.]

(a) Except for those persons ineligible to place bets under § 4-49-112, a person who is twenty-one (21) years of age or older and who is physically located in this state may place a wager in the manner authorized by law.

(b) A licensee shall ensure that all wagers accepted in this state are from qualified bettors and in accordance with this chapter.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 27, 30; T.C.A. § 4-51-311.

Compiler's Notes.

Former § 4-51-311 was transferred to § 4-49-111 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain

in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-112. Persons ineligible to place a bet or wager. [Effective January 1, 2022; See Compiler's Notes.]

(a) The following persons or categories of persons shall not, directly or indirectly, wager or bet on a sporting event in this state:

(1) Any member, officer, or employee of the council;

(2) With respect to a licensee, any principal owner, partner, member of the board of directors, officer, or supervisory employee;

(3) With respect to a vendor of a licensee, any principal owner, partner, member of the board of directors, officer, or supervisory employee;

(4) Any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a licensee, if the person is directly involved in the licensee's operation of sports wagering or the processing of sports wagering claims or payments through the licensee's online sports wagering platform;

(5) Any person subject to a contract with the council if the contract contains a provision prohibiting the person from participating in sports wagering;

(6) Any person with access to information that is known exclusively to a person who is prohibited from placing a wager in this state under this section;

(7) Any amateur or Olympic athlete if the wager is based on the sport or athletic event in which the athlete participates and that is overseen by the athlete's sports governing body;

(8) Any professional athlete if the wager is based on any sport or athletic event overseen by the athlete's sports governing body;

(9) Any owner or employee of a team, player, umpire or sports union personnel, or employee, referee, coach, or official of a sports governing body, if the wager is based on a sporting event overseen by the person's sports governing body;

(10) Any trustee or regent of a governing board of a public or private institution of higher education;

(11) Any member of an advisory board established under title 49, chapter 9, part 5;

(12) Any person prohibited by the rules of a governing body of a collegiate sports team, league, or association from participating in sports wagering activities;

(13) With respect to a student or an employee of a public or private institution of higher education, any person who has access to material nonpublic information concerning a student athlete or team, and the information is relevant to the outcome of a sporting event; provided, that the person is only prohibited from using the information to place a wager on a collegiate sporting event; and

(14) Any person having the ability to directly affect the outcome of a sporting event.

(b) The council may prescribe by rule additional categories of persons who are prohibited from placing a wager in this state.

(c) The council shall maintain a confidential registry of persons and categories of persons who are ineligible to place a wager in this state and shall provide the registry to each licensee in this state. The council shall provide each updated registry to the licensees as soon as practicable. Each licensee shall maintain the registry provided by the council confidentially.

(d) A violation of subsection (a) is:

(1) For a first offense, a Class C misdemeanor;

(2) For a second offense, a Class B misdemeanor; and

(3) For a third or subsequent offense, a Class A misdemeanor.

(e) As used in this section, "material nonpublic information" has the same meaning as defined in § 4-49-130(d).

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 9, 30; T.C.A. § 4-51-312.

Compiler's Notes.

Former § 4-51-312 was transferred to § 4-49-112 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment deleted ", board, or corporation" from the end of (a)(1); substituted "council" for "board" in (a)(5) and (b); and substituted "council" for "corporation" wherever it appears in (c).

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

Penalties for Class A, B and C misdemeanors, § 40-35-111.

4-49-113. Wagers as contracts. [Effective January 1, 2022; See Compiler's Notes.]

Notwithstanding § 29-19-101, each wager placed in accordance with this chapter is deemed to be an enforceable contract.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 27, 30; T.C.A. § 4-51-313.

Compiler's Notes.

Former § 4-51-313 was transferred to § 4-49-113 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-114. Wagers prohibited. [Effective January 1, 2022; See Compiler's Notes.]

(a)(1) The council shall, by rule, prohibit wagering on:

(A) Injuries, penalties, and other types or forms of wagering under this chapter that are contrary to public policy, unfair to consumers, or deemed to violate the Constitution of Tennessee, Article XI, § 5; and

(B) Individual actions, events, statistics, occurrences, or nonoccurrences to be determined during a collegiate sporting event, including, without limitation, in-game proposition bets on the performance or non-performance of a team or individual participant during a collegiate sporting event.

(2) A licensee may only offer parlay and proposition bets of the type or category as prescribed by rule of the council. The council shall prescribe by

rule the types and categories of parlay and proposition bets that may be offered in this state, if any.

(b)(1) A licensee, professional sports team, league, or association, or institution of higher education may submit to the council in writing a request to prohibit a type or form of wagering, or to prohibit a category of persons from wagering, if the licensee, team, league, association, or institution believes that such wagering by type, form, or category is contrary to public policy, unfair to consumers, or affects the integrity of a particular sport or the sports betting industry.

(2) The council shall, upon a demonstration of good cause from the requestor, grant the request. The council shall respond to a request pursuant to this subsection (b) concerning a particular event before the start of the event, or if it is not feasible to respond before the start of the event, as soon as practicable.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 10, 27, 30; T.C.A. § 4-51-314.

Compiler's Notes.

Former § 4-51-314 was transferred to § 4-49-114 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-115. Integrity of sports wagering — Public interest. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council, licensees, and vendors shall cooperate with investigations

conducted by sports governing bodies and law enforcement agencies, including, but not limited to, providing or facilitating the provision of account-level betting information and data files relating to persons placing wagers.

(b) Licensees shall immediately report to the council any information relating to:

(1) Criminal or disciplinary proceedings commenced against the licensee in connection with its operations;

(2) Abnormal betting activity or patterns that may indicate a concern with the integrity of a sporting event;

(3) Any potential breach of a sports governing body's internal rules and codes of conduct pertaining to sports wagering;

(4) Conduct that corrupts the betting outcome of a sporting event for purposes of financial gain, including match fixing; and

(5) Suspicious or illegal wagering activities, including cheating, the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, using agents to place wagers, and using false identification.

(c) Licensees shall also immediately report information relating to conduct described in subdivisions (b)(2)–(4) to the relevant sports governing body.

(d) Licensees shall share with the council, in real time and at the account level, information regarding a bettor, amount and type of bet, the time the bet was placed, the location of the bet, including the internet protocol address if applicable, the outcome of the bet, and records of abnormal betting activity. Information shared under this subsection (d) must be submitted in the form and manner as required by rule of the council.

(e) If a sports governing body has notified the council that real-time information sharing for wagers placed on its sporting events is necessary and desirable, licensees shall share the same information with the sports governing body or its designee with respect to wagers on its sporting events. Such information may be provided in anonymized form and may be used by a sports governing body solely for integrity purposes.

(f) In addition to its specific rulemaking authority under this chapter, the council may promulgate rules it deems necessary to maintain the integrity of sports wagering in this state and to protect the public interest.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 11, 27, 30; T.C.A. § 4-51-315.

Compiler's Notes.

Former § 4-51-315 was transferred to § 4-49-115 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a

license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment deleted "board," preceding "council, licensees, and vendors" in (a); substituted "council" for "board" wherever it appears in (b), (d), (e), and (f); and substituted "chapter" for "part" wherever it appears in the section..

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-116. Official league data. [Effective January 1, 2022; See Compiler's Notes.]

A licensee shall exclusively use official league data for purposes of live betting unless the licensee can demonstrate to the council that the governing body of a sport or sports league, organization, or association or other authorized entity cannot provide a feed of official league data for live betting in accordance with commercially reasonable terms, as determined by the council.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 12, 27, 30; T.C.A. § 4-51-316.

Compiler's Notes.

Former § 4-51-316 was transferred to § 4-49-116 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory coun-

cil upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-117. Applying for licenses — Fees. [Effective January 1, 2022; See Compiler's Notes.]

(a) An applicant for a license shall submit an application on a form, in such manner, and in accordance with such requirements as may be prescribed by rule of the council.

(b) An application for a license must include the following:

(1) The identification of the applicant's principal owners who own five percent (5%) or more of the company, partners, members of its board of directors, and officers;

(2) A national criminal background check for each person identified under subdivision (b)(1) conducted by the Tennessee bureau of investigation or another appropriate law enforcement agency. A set of fingerprints must be supplied upon request and in the manner requested by the investigating agency;

(3) Information, documentation, and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty, and integrity. Such information may include, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest records, business activities, financial affairs, and business, professional, and personal associates, covering at least the ten-year period immediately preceding the filing of the application;

(4) Notice and a description of civil judgments obtained against the applicant pertaining to antitrust or security regulation laws of the federal government, of this state or of any other state, jurisdiction, province, or country;

(5) Letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business. The letters of reference must indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, must specify what the information is;

(6) If the applicant has conducted gaming operations in a jurisdiction which permits such activity, letters of reference from the regulatory body that regulates sports wagering that specify the standing of the applicant with the regulatory body; provided, however, that if no such letters are received within sixty (60) days of the request therefor, the applicant may submit a statement under oath that the applicant is or was, during the period such activities were conducted, in good standing with the governing body;

(7) Information, documentation, and assurances concerning financial

background and resources as may be required to establish by clear and convincing evidence the financial stability, integrity, and responsibility of the applicant, including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. Each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the council. The council may consider any relevant evidence of financial stability. The applicant is presumed to be financially stable if the applicant establishes by clear and convincing evidence that it meets each of the following standards:

(A) The ability to assure the financial integrity of sports wagering operations by the maintenance of a bankroll or equivalent provisions adequate to pay winning wagers to bettors when due. An applicant is presumed to have met this standard if the applicant maintains, on a daily basis, a bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year;

(B) The ability to meet ongoing operating expenses which are essential to the maintenance of continuous and stable sports wagering operations; and

(C) The ability to pay, as and when due, all state and federal taxes;

(8) Information, documentation, and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and gaming experience as to establish the likelihood of the creation and maintenance of a successful, efficient sports wagering operation;

(9) Information, as required by rule of the council, regarding the financial standing of the applicant, including, without limitation, each person or entity that has provided loans or financing to the applicant;

(10) A nonrefundable application fee in the amount of fifty thousand dollars ($50,000), and an annual licensing fee in the amount of seven hundred fifty thousand dollars ($750,000); and

(11) Any additional information required by the council by rule.

(c) Upon review of the application, the council shall approve or deny an application for a license not more than ninety (90) days after receipt of an application.

(d) A license issued by the council authorizes the licensee to offer interactive sports wagering in this state.

(e) A licensee may renew its license by submitting an application on a form, in such manner, and in accordance with such requirements as may be prescribed by rule of the council. A licensee shall submit the nonrefundable annual license and application fees prescribed under subdivision (b)(10) with its application for the renewal of its license.

(f) For each application for licensure or renewal of a license that is approved under this section, the amount of the application fee must be credited toward the licensee's annual license fee and the licensee shall remit the balance of the annual fee to the council upon approval of a license. The fees collected from licensees under this section must be used by the council to pay the actual operating and administrative expenses incurred under this chapter.

(g) Except as provided in subsection (f), licensing and application fees collected by the council must be distributed to the state treasurer for deposit into the Tennessee Promise scholarship endowment fund created under § 49-4-708(d).

(h) Each person holding a license under this chapter has a continuing duty to immediately inform the council of any change in status relating to any information that may disqualify the person from holding the license.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 13, 14, 27, 30; T.C.A. § 4-51-317.

Compiler's Notes.

Former § 4-51-317 was transferred to § 4-49-117 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" at the end of (a), substituted "council" for "board" wherever it appears in (b)(7)—(b)(11); substituted "council" for "board" wherever it appears in (c)-(e) and in (g)-(h); substituted "council" for "corporation" wherever it appears in (f); and substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-118. Restrictions on licensees. [Effective January 1, 2022; See Compiler's Notes.]

(a) A licensee shall not:

(1) Allow a minor to place a wager;

(2) Offer, accept, or extend credit to a bettor;

(3) Directly advertise or promote sports wagering to minors. The council shall adopt rules specific to the manner in which a licensee may advertise its business operations as authorized by this chapter;

(4) Offer or accept a wager on any event, outcome, or occurrence other than a sporting event, including, without limitation, a high school sporting event offered, sponsored, or played in connection with a public or private institution that offers education at the secondary level; or

(5) Accept a wager from a person who is on the registry created and maintained by the council under § 4-49-112(c).

(b) A violation of this section is:

(1) For a first offense, a Class B misdemeanor; and

(2) For a second or subsequent offense, a Class A misdemeanor.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 15, 27, 30; T.C.A. § 4-51-318.

Compiler's Notes.

Former § 4-51-318 was transferred to § 4-49-118 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" in (a)(3); substituted "council" for "corporation" in (a)(5); and substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Penalties for Class A and B misdemeanors, § 40-35-111.

4-49-119. Responsible sports wagering. [Effective January 1, 2022; See Compiler's Notes.]

(a) Licensees shall allow bettors to restrict themselves from placing wagers with the licensee, including limits on the time spent betting and amounts wagered, and take reasonable steps to prevent those bettors from placing such

wagers. At the request of a bettor, a licensee may share the request with the council for the sole purpose of disseminating the request to other licensees.

(b) The council shall promulgate rules that require a licensee to implement responsible sports wagering programs that include comprehensive training on responding to circumstances in which individuals present signs of a gambling addiction.

(c)(1) The department of mental health and substance abuse services shall use the funds distributed to the department under § 4-49-104(e)(3) to oversee one (1) or more grant programs with organizations to provide treatment services for individuals with problem gambling or a gambling disorder, and to establish prevention initiatives to reduce the number of individuals with problem gambling or a gambling disorder. The department may also use the funds distributed to the department to cover its actual administrative costs and the costs of professional services associated with overseeing each grant program.

(2) The department shall annually generate a report outlining the activities of the department with respect to funding received under this chapter for problem gambling and gambling disorders, including, but not limited to, descriptions of programs, therapies, grants, and other resources made available, the success and outcomes of utilizing such programs, therapies, grant programs, and resources, the number of persons treated, the number of persons who complete programs and therapies, and the rate of recidivism, if known. The department shall file the annual report with the governor, the speaker of the senate, and the speaker of the house of representatives, and shall publish the report on its website, no later than January 1 of each year. The annual report must include an itemization of the department's expenditures relating to administrative costs and professional services associated with its activities under this subsection (c).

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 16, 27, 30; T.C.A. § 4-51-319.

Compiler's Notes.

Former § 4-51-319 was transferred to § 4-49-119 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee

Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-120. Persons prohibited from obtaining licenses. [Effective January 1, 2022; See Compiler's Notes.]

The following persons shall not apply for or obtain a license:

(1) A member or employee of the council;

(2) An employee of any professional sports team;

(3) A coach of, or player for, a collegiate, professional, or Olympic sports team or sport;

(4) A person who is a member or employee of any governing body of a sports team, league, or association;

(5) A person who has been convicted of a crime as specified in rules promulgated by the council;

(6) A person having the ability to directly affect the outcome of a sporting event; and

(7) Any other category of persons, established by rule of the council, that if licensed, would affect the integrity of sports wagering in this state.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 17, 30; T.C.A. § 4-51-320.

Compiler's Notes.

Former § 4-51-320 was transferred to § 4-49-120 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not

limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment deleted ", board, or corporation" from the end of (1); and substituted "council" for "board" in (5) and (7).

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-121. Transfer of licenses. [Effective January 1, 2022; See Compiler's Notes.]

The council may adopt rules prescribing the manner in which a license may be transferred and a fee for the transfer of the license.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 18, 30; T.C.A. § 4-51-321.

Compiler's Notes.

Former § 4-51-321 was transferred to § 4-49-121 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-122. House rules — Acceptance of wagers — Payouts. [Effective January 1, 2022; See Compiler's Notes.]

(a) Each licensee shall adopt and adhere to a written, comprehensive policy

outlining the house rules governing the acceptance of wagers and payouts. The policy and rules must be approved by the council prior to the acceptance of a wager by a licensee. The policy and rules must be readily available to a bettor on the licensee's website.

(b) The council shall promulgate rules regarding:

(1) The manner in which a licensee accepts wagers from and issues payouts to bettors, including payouts in excess of ten thousand dollars ($10,000); and

(2) Reporting requirements for suspicious wagers.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 19, 30; T.C.A. § 4-51-322.

Compiler's Notes.

Former § 4-51-322 was transferred to § 4-49-122 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-123. Inspections. [Effective January 1, 2022; See Compiler's Notes.]

Members of the council or designated employees or agents of the council may, during normal business hours, enter the premises of any facility of a licensee or third party utilized by the licensee to operate and conduct business in accordance with this chapter for the purpose of inspecting books and records kept as required by this chapter, to ensure that the licensee is in compliance with this chapter, or to make any other inspection of the premises necessary to protect the interests of this state and its consumers.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 20, 27, 30; T.C.A. § 4-51-323.

Compiler's Notes.

Former § 4-51-323 was transferred to § 4-49-123 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "Members of the council or designated employees or agents of the council may" for "Members of the board or designated employees or agents of the corporation may" at the beginning of the paragraph; and substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-124. Licensee reporting requirements — Compliance hearing. [Effective January 1, 2022; See Compiler's Notes.]

(a) Each licensee shall report to the council, no later than January 15 of each year:

(1) The total amount of wagers received from bettors for the immediately preceding calendar year;

(2) The adjusted gross income of the licensee for the immediately preceding calendar year; and

(3) Any additional information required by rule of the council deemed in the public interest or necessary to maintain the integrity of sports wagering in this state.

(b) A licensee shall immediately report to the council any information relating to:

(1) The name of any newly elected officer or director of the board of the licensed entity; and

(2) The acquisition by any person of five percent (5%) or more of any class of corporate stock.

(c) With respect to information reported under subsection (b), a licensee shall include with the report a statement as to any conflict of interest that may exist as the result of such election or acquisition.

(d) Upon receiving a report under this section or § 4-49-115(b), the council may conduct a hearing in accordance with § 4-49-126 to determine whether the licensee remains in compliance with this chapter.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 21, 27, 30; T.C.A. § 4-51-324.

Compiler's Notes.

Former § 4-51-324 was transferred to § 4-49-124 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears in (a), substituted "council" for "board" in the introductory language of (b); substituted "council" for "board" wherever it appears in (d); and substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-125. Interactive sports wagering. [Effective January 1, 2022; See Compiler's Notes.]

(a) Prior to placing a wager with a licensee via interactive sports wagering, a bettor shall register with the licensee remotely and attest that the bettor meets the requirements to place a wager with a licensee in this state. Prior to verification of a bettor's identity in accordance with this section, a licensee shall not allow the bettor to engage in sports wagering, make a deposit, or process a

withdrawal via interactive sports wagering. A licensee shall implement commercially and technologically reasonable procedures to prevent access to sports wagering by minors on its interactive platforms. A licensee may use information obtained from third parties to verify that a person is authorized to open an account, place wagers, and make deposits and withdrawals.

(b) A licensee shall adopt a registration policy to ensure that all bettors utilizing interactive sports wagering are authorized to place a wager with a licensee within this state. The policy must include, without limitation, a mechanism by which to:

(1) Verify the name and age of the registrant;

(2) Verify that the registrant is not prohibited from placing a wager under § 4-49-112; and

(3) Obtain the following information:

(A) A physical address other than a post office box;

(B) A phone number;

(C) A unique user name; and

(D) An active email account.

(c) A licensee may require a bettor to provide the licensee with a signed and notarized document attesting that the bettor is qualified to engage in sports wagering under this chapter as part of the registration policy of the licensee.

(d) A bettor shall not register more than one (1) account with a licensee, and a licensee shall use all commercially and technologically reasonable means to ensure that each bettor is limited to one (1) account.

(e) A licensee, in addition to complying with state and federal law pertaining to the protection of the private, personal information of registered bettors, shall use all other commercially and technologically reasonable means to protect such information consistent with industry standards.

(f) Once a bettor account is created, a bettor may only fund the account through:

(1) Electronic bank transfer of funds, including such transfers through third parties;

(2) Debit cards;

(3) Online and mobile payment systems that support online money transfers; and

(4) Any other method approved by the rule of the council that is initiated with cash.

(g)(1) Each financial transaction with respect to an account between a bettor and licensee must be confirmed by email, telephone, text message, or other means agreed upon by the account holder. A licensee shall use all commercially and technologically reasonable means to independently verify the identity of the bettor making a deposit or withdrawal.

(2) If a licensee determines that the information provided by a bettor to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates the policies and procedures of the licensee, the licensee shall, within ten (10) days, require the submission of additional information that can be used to verify the identity of the bettor.

(3) If such information is not provided or does not result in verification of the bettor's identity, the licensee shall:

(A) Immediately suspend the bettor's account and not allow the bettor to place wagers;

(B) Retain any winnings attributable to the bettor;

(C) Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and

(D) Deactivate the account.

(h) A licensee shall utilize geo-location or geo-fencing technology to ensure that interactive sports wagering is only available to bettors who are physically located in this state. A licensee shall maintain in this state its servers used to transmit information for purposes of accepting or paying out bets or wagers on a sporting event placed by bettors located in this state.

(i) A licensee shall clearly and conspicuously display on the website page a statement indicating that it is illegal for a person under twenty-one (21) years of age to engage in sports wagering in this state.

(j) The council shall promulgate rules for purposes of regulating sports wagering via interactive sports wagering.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 22, 28, 30; T.C.A. § 4-51-325.

Compiler's Notes.

Former § 4-51-325 was transferred to § 4-49-125 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears in the section; and substituted "this chapter as part" for "this part as part" in (c).

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-126. Violations of chapter — Hearings — Administrative fines. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council may investigate and conduct a hearing with respect to a licensee upon information and belief that the licensee has violated this chapter, or upon the receipt of a credible complaint from any person that a licensee has violated this chapter. The council shall conduct investigations and hearings in accordance with rules adopted by the council.

(b) If the council determines that a licensee has violated any provision of this chapter or rule of the council, the council may:

(1) Suspend, revoke, or refuse to renew a license; and

(2) For any violation by a licensee, impose an administrative fine not to exceed twenty-five thousand dollars ($25,000) per violation.

(c) Except as provided in § 4-49-127, the council shall promulgate rules establishing a schedule of administrative fines that may be assessed in accordance with subsection (b) for each violation of this chapter.

(d) Fines assessed under this section must be accounted for separately for use by the council in a manner consistent with rules of the council.

(e) The council may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records, and documents for purposes of carrying out its duties under this chapter.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 23, 27, 30; T.C.A. § 4-51-326.

Compiler's Notes.

Former § 4-51-326 was transferred to § 4-49-126 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-127. Investigations by board. [Effective January 1, 2022; See Compiler's Notes.]

(a) The council, utilizing employees of the council, shall conduct investigations to determine whether:

(1) A licensee is accepting wagers from minors or other persons ineligible to place wagers in this state; and

(2) A person is unlawfully accepting wagers from another person without a license or at a location in violation of this chapter.

(b) After a hearing under § 4-49-126, if the council finds that:

(1) A licensee is accepting wagers from minors or other persons ineligible to place wagers in this state, the council shall impose a fine against the licensee in the following amount:

(A) For a first offense, one thousand dollars ($1,000);

(B) For a second offense, two thousand dollars ($2,000); and

(C) For a third or subsequent offense, five thousand dollars ($5,000); and

(2) A person is unlawfully accepting wagers from another person without a license, the council shall impose a fine against the person in the following amount:

(A) For a first offense, ten thousand dollars ($10,000);

(B) For a second offense, fifteen thousand dollars ($15,000); and

(C) For a third or subsequent offense, twenty-five thousand dollars ($25,000).

(c) This section does not prohibit the council from suspending, revoking, or refusing to renew the license of a licensee in accordance with § 4-49-126.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 24, 27, 30; T.C.A. § 4-51-327.

Compiler's Notes.

Former § 4-51-327 was transferred to § 4-49-127 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee

Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" wherever it appears in the section; substituted "employees of the council" for "security personnel of the corporation" in the introductory language of (a); and substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-128. Appealing final actions of the board. [Effective January 1, 2022; See Compiler's Notes.]

(a) A licensee or other person aggrieved by a final action of the council may appeal that decision to the chancery court of Davidson County.

(b) The chancery court of Davidson County shall hear appeals from decisions of the council and, based upon the record of the proceedings before the council, may reverse the decision of the council only if the appellant proves the decision to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the council; or

(5) Contrary to the United States Constitution, the Constitution of Tennessee, or this chapter.

(c) The chancery court may remand an appeal to the council to conduct further hearings.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 25, 27, 30; T.C.A. § 4-51-328.

Compiler's Notes.

Former § 4-51-328 was transferred to § 4-49-128 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-129. Civil penalties. [Effective January 1, 2022; See Compiler's Notes.]

(a) A licensee or other person who violates this chapter is liable for a civil penalty of not more than five thousand dollars ($5,000) per violation, not to exceed fifty thousand dollars ($50,000) for violations arising out of the same transaction or occurrence, which must accrue to the council and may be recovered in a civil action brought by the office of the attorney general and reporter or its designee in the name of the council.

(b) The office of the attorney general may seek and obtain an injunction in a court of competent jurisdiction for purposes of enforcing this chapter.

(c) Costs must not be taxed against the office of the attorney general and reporter or this state for actions brought under this section.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, §§ 26, 27, 30; T.C.A. § 4-51-329.

Compiler's Notes.

Former § 4-51-329 was transferred to § 4-49-129 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the

contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "council" for "board" and "chapter" for "part" wherever they appear in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-49-130. Transmission of sports information for purposes of sports wagering. [Effective January 1, 2022; See Compiler's Notes.]

(a) It is unlawful for any person or entity, directly or indirectly, to knowingly receive, supply, broadcast, display, or otherwise transmit material nonpublic information for the purpose of wagering on a sporting event or influencing another person's or entity's wager on a sporting event.

(b) This section does not apply to the dissemination of public information as news, entertainment, or advertising.

(c) A violation of this section is a Class A misdemeanor.

(d) As used in this section, "material nonpublic information" means information that has not been disseminated publicly concerning an athlete, contestant, prospective contestant, or athletic team, including, without limitation, confidential information related to medical conditions or treatment, physical or mental health or conditioning, physical therapy or recovery, discipline, sanctions, academic status, education records, eligibility, playbooks, signals, schemes, techniques, game plans, practices, strategies, assessments, systems, drills, or recordings of practices or other athletic activities.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30; T.C.A. § 4-51-330.

Compiler's Notes.

Former § 4-51-330 was transferred to 4-49-130 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are

assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Amendments.

The 2021 amendment substituted "chapter" for "part" wherever it appears in the section.

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

Penalty for Class A misdemeanor, § 40-35-111.

CHAPTER 50

[RESERVED]

CHAPTER 51

TENNESSEE EDUCATION LOTTERY IMPLEMENTATION LAW

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4-51-305. Lottery corporation sports wagering advisory council — Creation — Membership — Terms. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-306. Powers and duties of corporation and board — Adoption of rules. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-307. Removal of member. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-308. Reports of board. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-309. Requirements for escrow account — Insurance — Cash-on-hand. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-310. Financial practices — Audits of licensees — Post-employment restrictions. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-311. Persons authorized to engage in sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-312. Persons ineligible to place a bet or wager. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-313. Wagers as contracts. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-314. Wagers prohibited. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-315. Integrity of sports wagering — Public interest. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-316. Official league data. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-317. Applying for licenses — Fees. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-318. Restrictions on licensees. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-319. Responsible sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-320. Persons prohibited from obtaining licenses. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-321. Transfer of licenses. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-322. House rules — Acceptance of wagers — Payouts. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-323. Inspections. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-324. Licensee reporting requirements — Compliance hearing. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-325. Interactive sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-326. Violations of part — Hearings — Administrative fines. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-327. Investigations by board. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-328. Appealing final actions of the board. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-329. Civil penalties. [Effective until January 1, 2022; See Compiler's Notes.]
4-51-330. Transmission of sports information for purposes of sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]

PART 1
GENERAL PROVISIONS

4-51-101. Creation of corporation.

(a) There is hereby created a corporation, which shall be known as the "Tennessee education lottery corporation."

(b) The corporation shall be registered with the secretary of state and shall be subject to the corporate laws of the state.

(c) The corporation shall be a body, politic and corporate, and a quasi-public instrumentality, and not a state agency or department, which shall be deemed to be acting in all respects for the benefit of the people of the state through the operation of a state lottery and in the performance of other essential public functions entrusted to it.

(d) The corporation shall have perpetual succession and shall adopt, amend, and repeal bylaws and regulations for the conduct of its affairs.

(e) The corporation shall strive to maximize net lottery proceeds.

(f) Venue for the corporation is Davidson County.

History.
Acts 2003, ch. 297, § 2.

Compiler's Notes.
Acts 2003, ch. 297, § 1 provided that: "This act shall be known and may be cited as the 'Tennessee Education Lottery Implementation Law'."

Cross-References.
Law enforcement efforts, § 39-15-413.
Lotteries, Tenn. Const., art. XI, § 5.
Lotteries, chain letters and pyramid clubs, § 39-17-506.
Lottery not gambling, § 8-47-127.
Lottery sales, title 39, ch. 17, part 6.
Possession of gambling device or record, forfeiture, § 39-17-505.
State lottery proceeds, title 49, ch. 4, part 9.
Tennessee education lottery corporation, §§ 4-51-132, 4-51-133.
Tennessee Lottery Funds for Education Projects Loan Act of 2003, title 4, ch. 31, part 10.

Textbooks.
Tennessee Jurisprudence. 18 Tenn. Juris., Lotteries, §§ 1 et seq.

Law Reviews.
Let the Games Begin: Examining the Lottery (John P. Williams), 39 No. 11 Tenn. B.J. 18 (2003).
So Your Client Just Won the Lottery. (Dan W. Holbrook), 40 No. 4 Tenn. B.J. 32 (2004).

Attorney General Opinions.
Legality of lottery pool, OAG 04-042, 2004 Tenn. AG LEXIS 42 (3/12/04).

4-51-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the board of directors of the Tennessee education lottery corporation;

(2) "Chief executive officer" means the chief executive officer of the Tennessee education lottery corporation;

(3) "Corporation" means the Tennessee education lottery corporation;

(4) "Director" means a member of the board of directors of the Tennessee education lottery corporation;

(5) "Educational programs and purposes" means financial assistance to Tennessee citizens to enable such citizens to attend post-secondary educational institutions located within Tennessee, capital outlay projects for grades kindergarten through twelve (K-12) educational facilities, early learning programs and after school programs in accordance with article XI,

§ 5 of the Constitution of Tennessee;

(6) "Immediate family" means a spouse, child, step-child, brother, sister, son-in-law, daughter-in-law, parent, or grandparent;

(7) "Local government unit" means any county, metropolitan government, incorporated town or city, or special district of the state;

(8) "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance approved by the board and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices. For the purposes of this chapter, "lottery," "lotteries," "lottery game," or "lottery games" does not include:

(A) **Casino gambling or games of chance associated with casinos and prohibited pursuant to the Constitution of Tennessee, Article XI, § 5.** For the purposes of this subdivision (8)(A), "casino gambling" means a location or business for the purpose of conducting illegal gambling activities, excluding the sale and purchase of lottery tickets or shares as authorized by this chapter; or

(B) **Video lottery.** For the purposes of this subdivision (8)(B), "video lottery" means a lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for a cash or noncash prize, or nothing, determined wholly or predominantly by chance;

(9) "Lottery proceeds" or "proceeds" means all lottery revenue derived from the sale of lottery tickets or shares and all other moneys derived from the lottery or received by the Tennessee education lottery corporation;

(10) "Lottery retailer" or "retailer" means a person who sells lottery tickets or shares on behalf of the Tennessee education lottery corporation pursuant to a contract;

(11) "Lottery vendor" or "vendor" means a person who provides or proposes to provide goods or services to the Tennessee education lottery corporation pursuant to a major procurement contract, but does not include an employee of the Tennessee education lottery corporation, a retailer, or a state agency or instrumentality of the Tennessee education lottery corporation. Such term does include a corporation whose shares are traded publicly and that is the parent company of the contracting party in a major procurement contract;

(12) "Major procurement contract" means any gaming product or service costing in excess of seventy-five thousand dollars ($75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Tennessee lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation;

(13) "Minority-owned business" means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is

owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background, or sex;

(B) A disability as defined in § 4-26-102; or

(C) Past practices of racial discrimination against African-Americans;

(14) "Net proceeds" or "net lottery proceeds" means all revenue derived from the sale of lottery tickets or shares and all other moneys derived from lottery games minus operating expenses. "Net proceeds" or "net lottery proceeds" does not include unclaimed prize money;

(15) "Operating expense" means all costs of doing business including, but not limited to, prizes, commissions, and other compensation paid to a lottery retailer, advertising and marketing costs, rental fees, personnel costs, capital costs, depreciation of property and equipment, amounts held in or paid from a fidelity fund pursuant to § 4-51-118, and all other operating costs;

(16) "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity;

(17) "Prize" means an award, gift, or anything of value regardless of whether there are conditions or restrictions attached to its receipt;

(18) "Share" means any intangible evidence of participation in a lottery game; and

(19) "Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game.

History.
Acts 2003, ch. 297, § 2.

Attorney General Opinions.
Hot Trax Champions is not a video lottery as prohibited by Tennessee law, OAG 07-035, 2007 Tenn. AG LEXIS 35 (3/23/07).

4-51-103. Board of directors — Appointment, duties.

(a) The corporation shall be governed by a board of directors composed of seven (7) directors.

(b) The directors shall be residents of this state, shall have expertise in their businesses or professions, and shall be appointed by the governor. All appointments shall be filed with the secretary of state within five (5) working days of appointment.

(c)(1) No person shall serve as a director of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court, or court of another state, territory or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivision (c)(1)(A), (c)(1)(B), or

(c)(1)(C).

(2) Prior to the appointment of a person as a director, the governor shall submit the names of potential directors to the Tennessee bureau of investigation and the Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after submission of names by the governor. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to title 10, chapter 7, part 5.

(d) In making the appointments pursuant to subsection (b), the governor shall strive to ensure that the board is composed of directors who are diverse in professional or educational background, ethnicity, race, gender, geographic residency, heritage, perspective and experience.

(e)(1) Directors shall serve terms of five (5) years; provided, however, that of the initial directors appointed:

(A) Two (2) directors shall be appointed for an initial term of one (1) year;

(B) Three (3) directors shall be appointed for an initial term of three (3) years; and

(C) Two (2) directors shall be appointed for an initial term of five (5) years.

(2) After the initial terms, directors shall be appointed to serve five-year terms.

(f) All appointments of the directors shall be confirmed by joint resolution adopted by each house of the general assembly prior to the commencement of the term of office to which such director is appointed. If the general assembly is not in session when initial appointments are made, all initial appointees shall serve the terms prescribed pursuant to subsection (e), unless such appointments are not confirmed within thirty (30) days after the general assembly next convenes following such appointments. Any vacancy on the board shall be filled by the governor to serve the unexpired term and such appointment shall be confirmed in the same manner as the original appointment. However, if the general assembly is not in session and a vacancy occurs, the governor shall fill such vacancy by appointment and the appointee to such vacancy shall serve the unexpired term unless such appointment is not confirmed within thirty (30) days after the general assembly next convenes following the appointment to fill such vacancy.

(g) The term of office of each director shall commence on July 1, following such director's appointment; provided, however, that the term of office for each initial director shall commence on the date of appointment but shall be calculated, for purposes of the term, from July 1, 2003. Notwithstanding this section, at the end of the director's term, the director shall continue to serve until a replacement is appointed by the governor. All initial appointments of directors shall be made on or before July 1, 2003.

(h) A director of the board, or any member of their immediate family, shall not have a direct or indirect interest at the time of their appointment, or within a period of two (2) years prior to their appointment, in any undertaking that puts their personal interest in conflict with that of the corporation, including, but not limited to, any interest, through ownership, stock or otherwise, in a major procurement contract or a participating retailer; provided, however, that a director, or a member of such director's immediate family, may hold an incidental interest not to exceed one percent (1%) of the outstanding stock of a participating retailer.

(i) The directors shall elect from their membership a chair and vice chair. The directors shall also elect a secretary and treasurer who may, from time-to-time, serve as the acting chief executive officer of the corporation. Such officers shall serve for such terms as shall be prescribed by the bylaws of the corporation or until their respective successors are elected and qualified. No director of the board shall hold more than one (1) office of the corporation, except that the same director may serve as secretary and treasurer.

(j) The board of directors may delegate to one (1) or more of its members, to the chief executive officer, or to any agent or employee of the corporation such powers and duties as it may deem proper.

(k) A majority of the directors in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(*l*) Action may be taken and motions and resolutions adopted by the board at any board meeting by the affirmative vote of a majority of present and voting directors.

(m) No vacancy in the membership of the board shall impair the right of the directors to exercise all the powers and perform all the duties of the board.

(n)(1) Upon approval by the chair, directors of the board shall be reimbursed for actual and reasonable expenses incurred or a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106 for each day's service spent in the performance of the duties of the corporation or both.

(2) Directors shall not receive a salary for their duties.

(o)(1) The governor may remove a director for neglect of duty or misconduct in office.

(2) If the governor seeks removal of a director pursuant to this subsection (o), the governor shall deliver to the director a copy of the charges levied against such director together with a notice of hearing affording such director an opportunity to be heard in person or by counsel to defend publicly against such charges prior to removal. The notice of hearing shall be served upon the director no later than ten (10) days prior to the hearing date.

(3) If such director is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the director and the governor's findings regarding the charges, together with a complete record of the proceedings.

(4) If a director is removed, such vacancy shall be filled in the same manner as other vacancies on the board.

(p) No director shall make a contribution to the campaign of a candidate for the general assembly or to a candidate for governor.

History.
Acts 2003, ch. 297, § 2; 2019, ch. 507, § 3.

Compiler's Notes.
Acts 2019, ch. 507, § 7 provided that the act take effect July 1, 2019, the public welfare requiring it. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-51-104. Chief executive officer — Board duties.

(a) The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall direct the day-to-day operations and management of the corporation. The chief executive officer shall be vested with such powers and duties as specified by the board and by law. The chief executive officer shall serve at the pleasure of the board.

(b) The board of directors shall provide the chief executive officer with private sector perspectives of a large marketing enterprise.

(c) The board of directors shall:

(1) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(2) Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the chief executive officer;

(3) Hear appeals required by this chapter;

(4) Not approve a bonus for, and no bonus shall be paid to, the chief executive officer or any other of the executive employees of the corporation for any fiscal year in which lottery revenues are flat or declining as measured against the previous fiscal year's revenues;

(5) Adopt regulations, policies, and procedures relating to the conduct of lottery games and as specified in § 4-51-108; and

(6) Perform such other functions as specified by this chapter.

History.
Acts 2003, ch. 297, § 2; 2009, ch. 531, § 62.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

Attorney General Opinions.
Tennessee education lottery corporation: contract amendments. OAG 10-73, 2010 Tenn. AG LEXIS 79 (5/21/10).

4-51-105. Corporate powers.

(a) The corporation shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter that are not in conflict with the constitution of the state of Tennessee and that are generally exercised by corporations engaged in entrepreneurial pursuits, including, but not limited to, the following powers:

(1) To sue and be sued as provided in this chapter;

(2) To adopt and alter a seal;

(3) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the corporation may determine. In the

adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the corporation shall be exempt from the requirements of the Tennessee Uniform Administrative Procedures Act, compiled in chapter 5 of this title;

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and enforce its rights with respect to the copyrights and marks;

(6) To initiate, supervise, and administer the operation of the lottery in accordance with this chapter and regulations, policies, and procedures adopted pursuant to this chapter;

(7) To enter into written agreements with one (1) or more other states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games;

(8) To conduct such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication;

(9) To acquire or lease real property and make improvements to that real property and acquire by lease or by purchase tangible personal property and intangible personal property;

(10) To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider; provided, however, that any such debt must be approved by the state funding board;

(11) To be authorized to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the corporation;

(12) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel and hearing officers to conduct hearings required by this chapter, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan; provided, however, that the corporation may become a participating employer in the Tennessee consolidated retirement system pursuant to § 4-51-131 and may be eligible as a quasi-governmental organization for state group health insurance pursuant to § 8-27-207 [repealed and reenacted. See Compiler's Notes];

(13) To select and contract with vendors and retailers;

(14) To enter into contracts or agreements with the Tennessee bureau of investigation, local law enforcement agencies, appropriate federal agencies or private companies for the performance of criminal record checks, background investigations, and security checks;

(15) To enter into contracts of any and all types on such terms and conditions as the corporation may determine;

(16) To establish and maintain banking and other financial relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;

(17) To advertise and promote the lottery and lottery games in a dignified

and responsible manner;

(18) To act as a retailer, to conduct promotions that involve the dispensing of lottery tickets or shares, and to establish and operate sales facilities to sell lottery tickets or shares and any related merchandise;

(19) To establish and maintain regional offices; provided, however, that there shall be at least one (1) such office in each grand division; and

(20) To adopt and amend such regulations, policies, and procedures as necessary to carry out and implement its powers and duties, organize and operate the corporation, regulate the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public. The promulgation of any such regulations, policies, and procedures shall be exempt from the requirements of the Tennessee Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(b) Title 67, chapter 4, parts 7, 20, and 21 shall not apply to the activities of the corporation.

(c) The powers enumerated in subsection (a) are cumulative of and in addition to those powers enumerated elsewhere in this chapter, and do not limit or restrict any other powers of the corporation.

History.
Acts 2003, ch. 297, § 2; 2005, ch. 417, § 1.

Compiler's Notes.
Section 8-27-207 referred to in this section was repealed and reenacted by Acts 2015, ch. 426, effective May 18,2015. For current comparable provisions, see now § 8-27-702.

Cross-References.
Grand divisions, title 4, ch. 1, part 2.

4-51-106. Investments.

(a)(1) Investment of funds of the corporation shall be undertaken in a manner that first seeks to ensure preservation of principal, that next ensures the liquidity needs of the corporation are met and, after satisfaction of these objectives, seeks a market rate of return.

(2) Pursuant to § 4-51-105(a)(3), the corporation shall adopt an investment policy to govern the investment of assets consistent with the objectives listed in subdivision (a)(1).

(3) A copy of the corporation's investment policy, and any revisions to that policy, shall be filed with the state funding board.

(b) The corporation shall be authorized to invest in securities as provided in § 9-4-602; provided, however, that if the business needs of the corporation necessitate investment in securities or classes of securities not specifically authorized in § 9-4-602, the corporation shall be authorized to invest in such additional securities or classes of securities after filing a statement with the state funding board describing the need for, and nature of, such additional security or classes of securities.

(c) The corporation is authorized, but not required, to invest its moneys as part of the local government investment pool created in title 9, chapter 4, part 7 and shall be deemed to be eligible for participation in such pool.

History.
Acts 2003, ch. 297, § 2.

4-51-107. Bank accounts.

(a) In accordance with § 4-51-105(a)(16), the corporation shall establish and maintain bank accounts only in institutions deemed to be qualified public depositories pursuant to title 9, chapter 4, part 5; provided, however, that if business needs dictate the establishment of accounts with an institution other than a qualified public depository, the corporation may create such accounts after filing a statement with the state funding board describing the business need for accounts at such an institution and the corporation's plan for securing funds on deposit with such an institution.

(b) For purposes of § 45-2-611, the corporation shall be considered a "governmental entity" and funds in its possession shall be deemed to be "public funds."

History.
Acts 2003, ch. 297, § 2.

4-51-108. Adoption of regulations, policies, and procedures.

(a) The board may adopt regulations, policies, and procedures regulating the conduct of lottery games in general including, but not limited to, regulations, policies, and procedures specifying:

(1) The type of games to be conducted, including, but not limited to, instant lotteries, online games, and other games traditional to the lottery. Such games may include the selling of tickets or shares, or the use of electronic or mechanical devices; provided, however, that the board shall not approve, and the corporation shall not operate, a video lottery as defined in § 4-51-102(8)(B);

(2) The sales price of tickets or shares and the manner of sale; provided that all sales shall be for cash only and that payment by checks, credit cards, charge cards or any form of deferred payment is prohibited. For the purposes of this subdivision (a)(2), "cash" means coins or notes. Nothing in this part shall be construed as prohibiting or restricting the direct sale of lottery tickets or shares by the corporation through any form of payment and in any amount;

(3) The type, number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, which may include lump sum payments or installments over a period of years;

(6) The manner of payment of prizes by the corporation or a lottery retailer to the holders of winning tickets or shares, including, without limitation, provision for payment of prizes not exceeding six hundred dollars ($600) after deducting the price of the ticket or share and after performing validation procedures appropriate to the game and as specified by the board;

(7) The frequency of games and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares, which may include the use of electronic or mechanical devices, but such devices shall

only be placed in locations on the premises of the lottery retailer that are within the view of such retailer or an employee of such retailer and, if outside the area of immediate control of the retailer, such devices shall be equipped with technology allowing such retailer to remotely deactivate such device. All electronic or mechanical devices outside the area of immediate control of the retailer shall bear a conspicuous label at least twelve inches (12″) in circumference prohibiting the use of such device by persons under eighteen (18) years of age, stating the following:

ATTENTION: STATE LAW STRICTLY PROHIBITS THE SALE OF LOTTERY TICKETS TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS; PROOF OF AGE MAY BE REQUIRED FOR PURCHASE.

* * *

ATENCION: POR LEY DEL ESTADO DE TENNESSEE ES ESTRICTAMENTE PROHIBIDO VENDER BOLETAS DE LOTERIA A PERSONAS MENORES DE DIECIOCHO AÑOS; PRUEBA DE EDAD PUEDE SER REQUERIDA PARA COMPRARLAS.

(B) A lottery retailer who allows a person under eighteen (18) years of age to purchase a lottery ticket or share from an electronic or mechanical device shall be subject to the penalties provided in § 39-17-602;

(10) The manner and amount of compensation to lottery retailers; and

(11) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

(b) The board may delegate the adoption of regulations, policies, and procedures relating to the conduct of lottery games to the chief executive officer.

(c) The corporation shall not print on any lottery ticket a representation or likeness of the state flag, as provided in § 4-1-301, or the state seal, as provided in § 4-1-314.

History.
Acts 2003, ch. 297, § 2.

Law Reviews.
So Your Client Just Won the Lottery. (Dan W. Holbrook), 40 No. 4 Tenn. B.J. 32 (2004).

4-51-109. Duties of chief executive officer.

(a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the initiation and supervise and administer the operation of the lottery games;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote or provide for promotion of the lottery and any functions related to the corporation;

(5) Prepare a budget for the approval of the board;

(6) Require bond from such retailers and vendors in such amounts as required by the board;

(7) Report quarterly to the comptroller of the treasury, the state treasurer, the state and local government committee of the senate, the state government committee of the house of representatives, the office of legislative budget analysis and the board a full and complete statement of lottery revenues and expenses for the preceding quarter;

(8) Report quarterly to the commissioner of finance and administration, the commissioner of education, the chairs of the finance, ways and means committees of the senate and house of representatives, the chair of the education committee of the senate, the chair of the education administration committee of the house of representative, and the office of legislative budget analysis, a full and complete statement of the moneys that became unclaimed prize moneys for deposit in the after school programs special account in the preceding quarter; and

(9) Perform other duties generally associated with a chief executive officer of a corporation of an entrepreneurial nature.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with this chapter or the regulations, policies, and procedures of the board.

(c) The chief executive officer or a designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

(d)(1) No person shall serve as chief executive officer of the corporation who has been convicted of:

(A) Any felony;

(B) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(C) Any violation of this chapter; or

(D) Any offense in a federal court, military court or court of another state, territory or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (d)(1)(A), (d)(1)(B), or (d)(1)(C).

(2) Prior to employment of a person as the chief executive officer, the board shall submit the names of potential chief executive officers to the Tennessee bureau of investigation and the Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, other law enforcement agency or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request and in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after submission of names by the board. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public pursuant to title 10, chapter 7, part 5.

(e) No person shall be selected to serve as the initial chief executive officer of the corporation who does not possess:

(1) At least two (2) years of experience as a chief executive officer or chief operating officer of a state lottery within the United States; or

(2) At least five (5) years of management level experience with a state lottery within the United States.

History.

Acts 2003, ch. 297, § 2; 2008, ch. 889, § 1; 2010, ch. 1030, §§ 5, 6; 2011, ch. 410, § 9(a); 2013, ch. 236, § 64; 2015, ch. 182, § 1; 2019, ch. 345, § 11; 2021, ch. 64, § 4.

Compiler's Notes.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Amendments.

The 2021 amendment substituted "education administration committee of the house of representatives" for "education committee of the house of representatives" in (a)(8).

Effective Dates.

Acts 2021, ch. 64, § 132. March 29, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

4-51-110. Employees — Personnel program.

(a) The corporation shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments.

(b) No employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(c) No employee of the corporation, with decision-making authority, shall participate in any decision involving a retailer with whom the employee has a financial interest.

(d) No employee of the corporation who leaves the employment of the corporation may represent any vendor or lottery retailer before the corporation for a period of two (2) years following termination of employment with the corporation.

(e) All offers of employment shall be extended contingent upon the results of a criminal history records check. Immediately upon the acceptance of the offer of employment, the chief executive officer, or such officer's designee, shall submit the names of such persons to the Tennessee bureau of investigation. The Tennessee bureau of investigation, pursuant to § 38-6-109, shall conduct a criminal history records check on all such persons. The Tennessee bureau of investigation may contract with the federal bureau of investigation, other law enforcement agencies, or any other legally authorized entity to assist in such investigation. Such persons shall supply a fingerprint sample on request, in the manner requested by the investigating entity. The Tennessee bureau of investigation shall conduct such investigation as soon as practicable after submission of names by the chief executive officer or such officer's designee. The corporation shall pay, as an operating expense, the cost of the records check. The results of such a records check shall not be considered a record open to the public, pursuant to title 10, chapter 7, part 5.

(f) In addition to any records check pursuant to subsection (e), those persons accepting an offer of employment with the corporation at the level of division director and above, and at any level within the division of security and as

otherwise required by the board, shall immediately have their names submitted by the chief executive officer, or such officer's designee, for a background investigation, which may be conducted by the Tennessee bureau of investigation or other law enforcement agency, or any other legally authorized investigative entity. Such investigation shall be conducted as soon as practicable after submission of names by the chief executive officer or such officer's designee. The corporation shall pay, as an operating expense, the cost of the investigation. The results of such investigation shall not be considered a record open to the public, pursuant to title 10, chapter 7, part 5. Such person's offer of employment shall be further contingent upon the results of such investigation.

(g) No person shall be maintained as an employee of the corporation who has been convicted of:

(1) Any felony;

(2) A misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(3) Any violation of this chapter; or

(4) Any offense in a federal court, military court or court of another state, territory or jurisdiction that, under the laws of this state, would disqualify such person, pursuant to subdivision (g)(1), (g)(2) or (g)(3).

(h) The corporation shall bond corporation employees who have access to corporation funds or lottery revenue, in such an amount as provided by the board, and may bond other employees as deemed necessary.

History.
Acts 2003, ch. 297, § 2; 2005, ch. 417, § 2.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-51-111. Lottery proceeds.

(a)(1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least fifty percent (50%) of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided that this subdivision (a)(2) shall not be deemed to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net lottery proceeds shall equal at least thirty-five percent (35%) of the lottery proceeds or an amount that maximizes net lottery proceeds; provided, however, that for the first two (2) full fiscal years and any partial first fiscal year of the corporation, net lottery proceeds need only equal, as nearly as practical, thirty percent (30%) of the lottery proceeds. If, after the second full fiscal year, the corporation determines that an amount that maximizes net lottery proceeds is less than thirty-five percent (35%) of the lottery proceeds, then, immediately upon making such determination, the corporation shall file with the state funding board a statement of reasons supporting such determination and a projection of such amount.

(b)(1) There is created within the state treasury a "lottery for education account." Amounts remaining in the account at the end of each fiscal year

shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the account. All earnings attributable to such investments shall be credited to the lottery for education account.

(2) On or before the fifteenth day of the first month of each quarter, the corporation shall transfer to the state treasury, for credit to the lottery for education account, an amount representing an estimate of the net lottery proceeds for the immediately preceding quarter. Any additional transfers required to reconcile the amount of the net lottery proceeds transferred on the fifteenth day of the month shall be completed by the last business day of the month following the end of the quarter. Upon deposit into the state treasury, net lottery proceeds shall become the unencumbered property of the state of Tennessee and the corporation shall have no power to agree or undertake otherwise. Except as otherwise provided in subdivision (b)(3), such funds shall be expended for education programs and purposes in accordance with the Constitution of Tennessee, Article XI, § 5.

(3)(A) A general shortfall reserve subaccount shall be maintained within the lottery for education account.

(B) Except as provided in subdivision (b)(3)(D), the amount of the general shortfall reserve subaccount shall equal one hundred million dollars ($100,000,000). In any fiscal year, only an amount necessary to maintain the general shortfall reserve subaccount in an amount equal to one hundred million dollars ($100,000,000) shall be deposited into the subaccount.

(C) If the net lottery proceeds deposited into the lottery for education account in any year, exclusive of the amount in the general shortfall reserve subaccount, are not sufficient to meet the amount appropriated for educational programs and purposes pursuant to subsection (c), the general shortfall reserve subaccount may be drawn upon to meet the deficiency; provided, however, that reserves in the account shall be used first for any shortfall in the amount appropriated to the educational scholarship program and then to any other educational programs and purposes otherwise provided by law for which net lottery proceeds may be expended. In the event it becomes necessary to draw from the general shortfall reserve subaccount in any fiscal year for educational programs and purposes, such programs and purposes shall be reviewed and shall be reduced to the amount of available net lottery proceeds, exclusive of the general shortfall reserve subaccount, estimated to be available in the next fiscal year. In the event the general shortfall reserve subaccount is drawn upon in any fiscal year, the subaccount shall be brought back to its prior level in subsequent fiscal years. Five percent (5%) of net lottery proceeds shall be deposited into the lottery for education account each quarter, until the amount of the general shortfall reserve subaccount equals one hundred million dollars ($100,000,000). Notwithstanding this subdivision (b)(3)(C) to the contrary, the program reduction and repayment provisions of this subdivision (b)(3)(C) shall not be triggered, if amounts in excess of one hundred million dollars ($100,000,000) are recommended for appropriation pursuant to subdivision (b)(3)(D).

(D) In addition to the amount provided pursuant to subdivision (b)(3)(B), the funding board may recommend appropriation of funds to the general shortfall reserve subaccount if such fund is deemed inadequate. The funding board may recommend appropriation of funds from the general shortfall reserve subaccount if adequate funds are deemed to be available in the general shortfall reserve subaccount and if such funds are needed for educational programs and purposes consistent with the Constitution of Tennessee, Article XI, § 5; provided, that "adequate funds" shall not be deemed to be available if such recommended appropriation would reduce the general shortfall reserve account below one hundred million dollars ($100,000,000).

(E) The comptroller of the treasury shall annually review and report to the education committee of the senate and the education administration committee of the house of representatives concerning the adequacy of the balance of the general shortfall reserve subaccount, whether payment from net lottery proceeds for educational programs authorized in the Constitution of Tennessee has been sufficient to fund the programs without drawing on the general shortfall reserve subaccount and whether triggers for replenishing or increasing the general shortfall reserve subaccount, if deemed inadequate, are sufficient.

(4) A special reserve subaccount shall be maintained within the lottery for education account. The amount of the special reserve subaccount shall be equal to one percent (1%) of net lottery proceeds deposited into the lottery for education account from all deposits made to the fund from the initial deposit until the last deposit made in fiscal year 2007-2008. Transfers to the special reserve subaccount shall be made from the lottery for education account quarterly until the end of such fiscal year. The amount in the special reserve subaccount may be used to make or support loans to local government units for educational programs and purposes in accordance with the Constitution of Tennessee, Article XI, § 5 and to pay or secure debt issued for such programs and purposes as otherwise provided by law. Such amount shall supplement, not supplant, nonlottery educational resources for such programs and purposes. Notwithstanding this section to the contrary, treasurer's earnings on the special reserve subaccount shall be credited to the special reserve subaccount to be used in a manner consistent with this subdivision (b)(4).

(c)(1) No later than the date in 2003 upon which the state funding board presents state revenue estimates to the governor pursuant to § 9-4-5202(e)(3), the funding board shall establish a projected revenue range for net lottery proceeds for the remainder of the current fiscal year and the next succeeding fiscal year. No later than the date of presentation of such estimates to the governor by the state funding board in all subsequent years, the funding board shall project the revenue for net lottery proceeds for the remainder of the then current fiscal year and the next succeeding four (4) fiscal years. Such projection shall be made in the same manner as other state revenues are projected by the funding board, which figure may be adjusted prior to the enactment of the general appropriations act. In making such projections, the funding board shall recognize unusual fluctuations in lottery

proceeds. In making such projections, the funding board is authorized to obtain information from those having expertise and experience in projecting revenue from the sale of lottery tickets or shares.

(2)(A)(i) Before December 15, 2003, and before December 15 in each succeeding year, the Tennessee student assistance corporation shall prepare a report setting forth an estimate of the total cost of lottery related financial assistance to be provided to Tennessee citizens during the next fiscal year pursuant to title 49, chapter 4, part 9. Such report shall include the major assumptions and the methodology used in arriving at such estimate. For the report due in December 2003, the Tennessee student assistance corporation shall base its estimate of total costs on the award values established pursuant to title 49, chapter 4, part 9. For subsequent reports, the Tennessee student assistance corporation shall base its estimate of total costs on the award values in effect at the time the report is prepared. The Tennessee higher education commission, the board of trustees of the University of Tennessee system, the state board of regents, the department of education and the Tennessee independent college and universities association shall provide the Tennessee student assistance corporation with such information as is needed to prepare its report. The Tennessee student assistance corporation shall deliver its report to the governor, the funding board, the speaker of the senate, the speaker of the house of representatives, the chairs of the senate and house of representatives finance, ways and means committees, the chair of the education committee of the senate, the chair of the education administration committee of the house of representatives, the state and local government committee of the senate, the state government committee of the house of representatives, and the office of legislative budget analysis.

(ii) Before December 15 of each year, the state funding board, with the assistance of the Tennessee student assistance corporation, shall project long-term funding needs of the lottery scholarship and grant programs established under title 49, chapter 4, part 9. The projections shall cover at least the four (4) fiscal years next succeeding the current fiscal year. The analysis shall be performed to determine if adjustments in lottery scholarship and grant programs should be made to prevent funding required in the future for such programs from exceeding estimates of net lottery proceeds made under subdivision (c)(1).

(B) Before December 15, 2003, and before December 15 in each succeeding year, appropriate state agencies shall submit to the funding board and to the governor their recommendations for other educational programs and purposes consistent with the Constitution of Tennessee, Article XI, § 5 based on the difference between the funding board's projections and recommendations for the lottery scholarship program based on the report submitted pursuant to subdivision (c)(2)(A). In no event shall such recommendations exceed the projections of the funding board for a specific fiscal year.

(3)(A) The governor shall submit to the general assembly in the annual budget document prepared pursuant to title 9, chapter 4, part 51 recom-

mendations concerning the distributions to be made from the lottery for education account based on the projections of the funding board, including recommended appropriations by the funding board from the general shortfall reserve subaccount, if any, and any treasurer's earnings credited to the lottery for education account.

(B) In a separate budget category entitled "net education lottery proceeds," the governor shall estimate the amount of net lottery proceeds and treasurer's earnings thereon to be credited to the lottery for education account during the fiscal year and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net lottery proceeds, treasurer's earnings thereon, and unappropriated surplus shall be designated "net education lottery proceeds."

(C) In the budget document, the governor shall submit specific recommendations as to the educational programs and purposes for which appropriations should be made from the lottery for education account. Such recommendation shall include the specific value of each category of awards to be offered pursuant to title 49, chapter 4, part 9. The recommendation for each category of award shall be the value of such award as set in the previous general appropriations act unless such value, based on the estimates of the Tennessee student assistance corporation and the funding board, should be adjusted in a manner consistent with title 49, chapter 4, part 9 and this chapter.

(D) The governor's recommendations as to the educational programs and purposes for which appropriations should be made in accordance with this subdivision (c)(3) shall be referred to the education committee of the senate and the education administration committee of the house of representatives for recommendation and comments prior to final action by the finance, ways and means committees of both houses on the general appropriations act.

(4) The general assembly shall appropriate from the lottery for education account by specific reference to it, or by reference to "net education lottery proceeds." All appropriations to any particular budget unit shall be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for net education lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(5) It is the intent of the general assembly that appropriations from the lottery for education account shall be allocated and expended for educational programs and purposes only in accordance with the Constitution of Tennessee, Article XI, § 5. Such net education lottery proceeds shall be used to supplement, not supplant, existing resources for educational programs and purposes.

(d) Any funds appropriated, but not expended, for educational programs or purposes from the lottery for education account or from the general shortfall reserve subaccount shall not revert to the general fund at the end of the fiscal year but shall be credited, respectively, to the lottery for education account or the general shortfall reserve subaccount and retained there until allocated and appropriated as provided in subdivision (b)(3) and subsection (c).

(e) In compliance with the requirement of this chapter that there shall be a separate accounting of net education lottery proceeds, no deficiency in the lottery for education account shall be replenished by book entries reducing any nonlottery reserve of general funds, including specifically, but without limitation, the reserve for revenue fluctuations or other reserve accounts established by law; nor shall any program or project started specifically from net education lottery proceeds be continued from the general fund; such programs must be adjusted or discontinued according to available net education lottery proceeds unless the general assembly by general law establishes eligibility requirements and appropriates specific other funds within the general appropriations act; nor shall any nonlottery surplus in the general fund be reduced. No surplus in the lottery for education account shall be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus in the lottery for education account shall be included in any revenue or surplus calculated for setting aside any additional funds in the reserve for revenue fluctuations as provided in § 9-4-211.

(f)(1) There is created a special account in the state treasury to be known as the "after school programs special account," hereinafter referred to as the "after school account." In accordance with § 4-51-123, one hundred percent (100%) of moneys constituting an unclaimed prize shall be deposited in the after school account at the end of each fiscal year.

(2) In any fiscal year in which the financial assistance program for attendance at post-secondary educational institutions located within this state is funded pursuant to title 49, chapter 4, part 9, and excess is available from net lottery proceeds for other educational purposes and projects consistent with the Constitution of Tennessee, Article XI, § 5, then in any such fiscal year moneys in the after school account may be appropriated by the general assembly from such account pursuant to subdivision (f)(3).

(3) Moneys in the after school account shall be used exclusively for after school programs consistent with the Constitution of Tennessee, Article XI, § 5. Such moneys shall supplement, not supplant, nonlottery educational resources for after school educational programs and purposes. The general assembly shall appropriate from the after school programs special account by specific reference to it, or by reference to the "after school account." Such appropriations shall otherwise be made in the manner required by law for appropriations.

(4) Any reserve balance remaining unexpended at the end of a fiscal year in the after school account shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(5) Notwithstanding this section to the contrary, interest accruing on investments and deposits of the after school account shall be credited to such account, shall not revert to the general fund, and shall be carried forward into the subsequent fiscal year.

(6) Moneys in the after school account shall be invested by the state treasurer in accordance with § 9-4-603.

History.

Acts 2003, ch. 297, § 2; 2004, ch. 625, § 1; 2004, ch. 841, § 2; 2005, ch. 417, §§ 3-5; 2006, ch. 940, § 1; 2009, ch. 531, §§ 60, 61; 2010, ch. 1030, § 7; 2011, ch. 410, § 9(b); 2012, ch. 896, §§ 1-3; 2012, ch. 925, § 14; 2013, ch. 236, § 64;

2015, ch. 182, §§ 2-4; 2019, ch. 345, § 12; 2021, ch. 64, § 5.

Compiler's Notes.

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Amendments.

The 2021 amendment substituted "education administration committee of the house of representatives" for "education committee of the house of representatives" in (b)(3)(E), (c)(2)(A)(i), and (c)(3)(D).

Effective Dates.

Acts 2021, ch. 64, § 132. March 29, 2021.

Attorney General Opinions.

Use of lottery proceeds for test preparation computer modules is not authorized, OAG 06-111, 2006 Tenn. AG LEXIS 120 (7/13/06).

Tennessee education lottery corporation: contract amendments. OAG 10-73, 2010 Tenn. AG LEXIS 79 (5/21/10).

NOTES TO DECISIONS

Analysis

1. Fiduciary Duty.
2. Bankruptcy.

1. Fiduciary Duty.

For purposes of nondischargeability of a debt in bankruptcy based on fiduciary defalcation, T.C.A. §§ 4-51-111, 4-51-120 created an express trust which imposed fiduciary duties upon the bankruptcy debtor as a lottery retailer to remit proceeds from sales of lottery tickets to the Tennessee education lottery corporation; the statutes identified the sale proceeds as the trust res, identified the corporation as the trust beneficiary, and identified the debtor as the trustee with the duties to deposit the proceeds in a trust account and remit the proceeds to the corporation. Tenn. Educ. Lottery Corp. v. Cooper (in re Cooper), 430 B.R. 480, 2010 Bankr. LEXIS 1680 (Bankr. E.D. Tenn. June 3, 2010).

Debt to state lottery corporation was nondischargeable under 11 U.S.C. § 523(a)(4), as an express trust was created between the lottery corporation and the debtors, who were lottery retailers, by virtue of T.C.A. §§ 4-51-120 and 4-51-111(a)(1), a retailer contract, a retailer application, and the lottery corporation's Retailer Rules and Regulations, and the debtors failed to protect the tickets and proceeds when they gave employees unauthorized access to a passcode. The debtors were reckless with respect to their duty to the lottery corporation, which resulted in a defalcation while acting in a fiduciary capacity. Tenn. Educ. Lottery Corp. v. Faulconer (in re Faulconer), — B.R. —, 2011 Bankr. LEXIS 3946 (Bankr. E.D. Tenn. Oct. 12, 2011).

2 Bankruptcy.

Certain payments made by Chapter 11 debtor, an authorized seller of Tennessee lottery tickets, to the operator of the lottery were not preferential payments under 11 U.S.C. § 547(b) because the parties' contract created a trust in proceeds from lottery ticket sales, and the payments were made from the debtor's lottery trust account. Appalachian Oil Co. v. Tenn. Educ. Lottery Corp. (In re Appalachian Oil Co.), 471 B.R. 199, 2012 Bankr. LEXIS 1707 (Bankr. E.D. Tenn. Mar. 23, 2012).

Certain payments made by Chapter 11 debtor, an authorized seller of Tennessee lottery tickets, to the operator of the lottery were preferential payments under 11 U.S.C. § 547(b) because, although the parties' contract created a trust in proceeds from lottery ticket sales, the payments were made from one of the debtor's general accounts, and the operator failed to trace the transferred funds to trust funds. Appalachian Oil Co. v. Tenn. Educ. Lottery Corp. (In re Appalachian Oil Co.), 471 B.R. 199, 2012 Bankr. LEXIS 1707 (Bankr. E.D. Tenn. Mar. 23, 2012).

4-51-112. Minority-owned businesses — Advisory council.

(a) It is the intent of the general assembly that the corporation encourage participation by minority-owned businesses. Accordingly, the board of directors shall adopt a plan that achieves to the greatest extent possible a level of participation by minority-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors. The corporation is authorized and directed to undertake training programs and other educational activities to enable such minority-owned businesses to

compete for contracts on an equal basis. The corporation will strive to maximize participation of minority-owned businesses to achieve a minimum participation goal of fifteen percent (15%) through both prime and second tier business contracting opportunities. The board shall monitor the results of minority-owned business participation and shall report the results of minority-owned business participation to the general assembly at least on an annual basis.

(b)(1) The chair of the board, in consultation with the board of directors, shall appoint an advisory council on minority business participation. The council shall be composed of nine (9) citizens, three (3) of whom shall be appointed from and represent each grand division of the state. The membership of the council shall collectively reflect a richness of diversity in professional and business experience, educational attainment, ethnicity, race, gender, heritage, and socio-economic perspective.

(2) The advisory council on minority business participation shall serve as an educational, research and technical resource for the board of directors. It shall be a duty of the council to solicit, analyze and present the views and concerns of minority business owners throughout the state. The council may report to the board of directors or to the state and local government committee of the senate and the state government committee of the house of representatives in writing at any time. The board of directors may invite the council to present oral testimony to the board of directors at any meeting of the board.

(3) The advisory council on minority business participation shall annually elect from its membership a chair, a vice chair and such other officers as it deems necessary. The council shall meet at least quarterly at the call of the chair. The organizational meeting of the advisory board shall be convened by the chair of the board of directors.

(4) Members appointed to the advisory council shall each serve regular terms of three (3) years; provided, however, that in order to stagger such terms, three (3) of the initial appointees shall serve terms of two (2) years, and three (3) of the initial appointees shall serve terms of one (1) year.

(5) The advisory council on minority business participation shall establish its own rules and internal operating procedures. As an operating expense of the corporation, members of the advisory council shall receive a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory council.

History.
Acts 2003, ch. 297, § 2; 2012, ch. 925, § 15; 2013, ch. 236, § 65.

Cross-References.
Grand divisions, title 4, ch.1, part 2.

4-51-113. Vendors — Requirements when submitting a bid, proposal, or offer — Procurement contract.

(a) The corporation shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid,

proposal, or offer as part of a major procurement. At the time of submitting such bid, proposal, or offer to the corporation, the corporation shall require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A) If the vendor is a corporation, the officers, directors, and each stockholder in such corporation; provided, however, that in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially one percent (1%) or more of such securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business in each such state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to the vendor's license, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

(5)(A) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court, or in another jurisdiction, of the vendor for any felony or any other criminal offense other than a traffic violation;

(B) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court, or in another jurisdiction, of any present employee, or past employee within ten (10) years, of the vendor for any felony or misdemeanor involving gambling, theft, computer offenses, forgery, perjury, dishonesty or unlawfully selling or providing a product or substance to a minor;

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor;

(7) A disclosure of the vendor's minority-owned business participation plan, if a portion of the vendor's contract is to be subcontracted pursuant to the proposal or, if at any time thereafter, a portion of such vendor's contract

is subcontracted; and

(8) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved.

(b) If ten percent (10%) or more of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

(c) A lottery procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in subsections (a) and (b) and any contract with such a vendor is voidable at the option of the corporation. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of a contract as may be specified in such contract may be terminated by the corporation. This section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background, and character of vendors for major procurements.

(d) A major procurement contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of a lottery in this or any other jurisdiction.

(e) A major procurement contract shall not be entered into with any vendor if such vendor has an ownership interest in an entity that had supplied consultation services under contract to the corporation regarding the request for proposals pertaining to those particular goods or services.

(f) For the purposes of this chapter, "jurisdiction" includes, but is not limited to:

(1) Any Native American tribal government;

(2) Any governmental body at the national, state or local level in the United States or its territories and possessions; and

(3) Any governmental body at the national or state, or its equivalent, level in any other country.

(g) No lottery system vendor nor any applicant for a major procurement contract, or an officer, director or employee of such vendor or applicant, or a member of such officer's, director's or employee's immediate family residing in the same household, shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100) in any calendar year, to any director, the chief executive officer or any employee of the corporation, or to a member of the immediate family of any such person.

(h) Notwithstanding this part to the contrary, no applicant for a major procurement contract, or any person employed by such applicant, may contact or otherwise solicit a member of the board of directors individually during the application and selection process for such contract. All contact and other solicitations made by an applicant for a major procurement contract, or any person employed by such applicant, shall be directed to the board as a whole.

History.

Acts 2003, ch. 297, § 2; 2004, ch. 841, § 6.

Attorney General Opinions.

T.C.A. § 4-51-113(g) would not apply in the situation where an employee of the TEL is married to an employee of one of the TEL's major procurement vendors, OAG 05-113, 2005 Tenn. AG LEXIS 115 (7/19/05).

4-51-114. Vendor — Performance bond or letter of credit — Minority-owned business waiver.

(a)(1)(A) Except as provided in subdivision (a)(2), each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank or credit provider acceptable to the corporation in an amount as deemed necessary by the corporation for that particular bid or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the corporation securities that are interest bearing or accruing and that are rated in one (1) of the three (3) highest classifications by an established nationally recognized investment rating service. Securities eligible under this section are limited to:

(i) Certificates of deposit issued by solvent banks or savings associations approved by the corporation and that are organized and existing under the laws of this state or under the laws of the United States;

(ii) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and

(iii) Corporate bonds approved by the corporation. The corporation that issued the bonds shall not be an affiliate or subsidiary of the depositor.

(B) Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

(2) Because of certain economic considerations, minority businesses may not be financially able to comply with the bonding, deposit of securities, or letter of credit requirements of subdivision (a)(1). In order to assure minority participation in major procurement contracts to the most feasible and practicable extent possible, the chief executive officer is authorized and directed to waive the bonding, deposit of securities, and letter of credit requirements of subdivision (a)(1) for a period of five (5) years from the time that a minority business enters into a major procurement contract in cases where any minority business substantiates financial hardship pursuant to the policies and procedures established by the board.

(b) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of the state.

(c) No contract shall be secured with any vendor in which a public officer, as covered in § 8-50-501(a), or an employee of such officer, has an ownership interest of one percent (1%) or more.

History.
Acts 2003, ch. 297, § 2.

4-51-115. Lottery retailers.

(a) The general assembly recognizes that to conduct a successful lottery, the corporation must develop and maintain a state-wide network of lottery retailers that will serve the public convenience and promote the sale of tickets

or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

(b) The corporation shall make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

(c)(1) The corporation shall provide for compensation to lottery retailers in the form of commissions for the sale and cashing of lottery tickets or shares in an amount of not less than six and one-half percent (6 ½%) of gross sales. Each lottery retailer shall be required to cash lottery tickets or shares up to the amount authorized pursuant to § 4-51-108(a)(6) in the manner adopted by regulation, policy, or procedure of the board.

(2) In addition to the commissions for services rendered by lottery retailers pursuant to subdivision (c)(1), the corporation may provide for other forms of compensation for services rendered by lottery retailers relating to the sale of lottery tickets or shares.

(d) The corporation shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display; provided, however, that if a retailer contract permits sales at multiple locations, a separate certificate shall be issued for each authorized location. Every lottery retailer shall post and keep conspicuously displayed in a location on the premises where lottery tickets or shares are sold, and accessible to the public, its certificate of authority. No certificate shall be assignable or transferable.

(e) Notwithstanding any other law to the contrary, no business seeking to become a lottery retailer shall be prohibited from applying to the corporation, and if successful in such application, from selling lottery tickets or shares, including, but not limited to, businesses licensed pursuant to title 57, chapter 3, part 2; provided, however, that the corporation shall not issue, sell or authorize the sale of lottery tickets at any location licensed to provide deferred presentment services pursuant to title 45, chapter 17, or to any pawnshop, as defined in § 45-6-203, or to any business engaged exclusively in the business of selling lottery tickets or shares; provided, further, that this subsection (e) shall not preclude the corporation from selling or giving away lottery tickets or shares.

(f) The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office. The criteria shall include, but not be limited to, the following:

(1) The applicant shall be current in filing all applicable tax returns to the state of Tennessee and in payment of all taxes, interest, and penalties owed to the state, excluding items under formal appeal pursuant to applicable statutes. The department of revenue is authorized and directed to provide this information to the corporation upon request; and

(2) No person, partnership, unincorporated association, corporation, including the board and executive officers of the corporation, or other business

entity shall be selected as a lottery retailer who:

(A) Has been convicted of a criminal offense related to the security or integrity of a lottery in this state or any other jurisdiction;

(B) Has been convicted of any criminal offense involving gambling, theft, computer offenses, forgery, perjury or dishonesty, unless the person's civil rights have been restored or at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subdivision (f)(2)(B);

(C) Has been found to have violated this chapter or any regulation, policy, or procedure of the corporation unless either ten (10) years have passed since the violation or the board finds the violation both minor and unintentional in nature;

(D) Is a vendor or any employee or agent of any vendor doing business with the corporation;

(E) Resides in the same household as a director or an officer of the corporation;

(F) Has made a statement of material fact to the corporation knowing such statement to be false; or

(G) Has been convicted of any criminal offense involving the unlawful selling or providing a product or substance to a minor in this state or any other jurisdiction, unless the offense involves a license violation where any sentence has been completed and the license has been restored, unless the person's civil rights have been restored, or unless at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subdivision (f)(2)(G).

(g)(1) Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet.

(2) Any lottery retailer contract executed pursuant to this section may, for good cause, be suspended, revoked, or terminated by the chief executive officer, or such officer's designee, if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in this chapter and shall not be subject to the Tennessee Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(3) All lottery retailer contracts shall be renewable unless, in the discretion of the corporation, sooner cancelled or terminated. At the time of renewal, the corporation shall review the lottery retailer's compliance with this chapter and title 39, chapter 17, part 6. The corporation shall renew such contracts only if the lottery retailer is in compliance with this chapter and title 39, chapter 17, part 6 and would otherwise be eligible to be a lottery retailer pursuant to this chapter and the terms of the retailer's contract; provided, however, that a violation of title 39, chapter 17, part 6 by an employee of a lottery retailer shall only prohibit the issuance of a certificate of authority for the specific location of such violation for a period of one (1) year from the date of conviction unless, in the case of a lottery retailer operating multiple locations and in the discretion of the corporation, the

entire contract should be cancelled or terminated as otherwise provided by this chapter or by the retailer's contract.

(h) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars ($100) in any calendar year, to any director, the chief executive officer, or any employee of the corporation, or to a member of the immediate family of any such person.

History.
Acts 2003, ch. 297, § 2; 2004, ch. 841, §§ 1, 3; 2005, ch. 417, § 6; 2007, ch. 319, §§ 1, 2.

Compiler's Notes.
Acts 2004, ch. 841, § 8 provided that the amendment of (f)(2)(B) by that act shall only apply to lottery retailer applications submitted, and lottery retailer contracts entered into on or after June 8, 2004.

4-51-116. Lottery retailer advisory board.

(a) The chair of the board of directors shall appoint a lottery retailer advisory board to be composed of twelve (12) lottery retailers, four (4) from each grand division, representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers. The function of the advisory board shall be to advise the board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

(b) Members appointed to the lottery retailer advisory board shall serve terms of two (2) years; provided, however, that six (6) of the initial appointees shall serve terms of one (1) year.

(c) The advisory board shall establish its own rules and internal operating procedures. The advisory board may report to the board of directors or to the state and local government committee of the senate and the state government committee of the house of representatives in writing at any time. The board of directors may invite the advisory board to make an oral presentation to the board of directors at regular meetings of the board.

(d) As an operating expense of the corporation, members of the advisory board shall receive a per diem not to exceed the per diem provided to members of the general assembly pursuant to § 3-1-106, for each day's service spent in the performance of the duties and responsibilities of the advisory board.

History.
Acts 2003, ch. 297, § 2; 2012, ch. 925, § 16; 2013, ch. 236, § 65.

Cross-References.
Grand divisions, title 4, ch.1, part 2.

4-51-117. Lottery retailer contract.

(a) No lottery retailer contract shall be transferable or assignable.

(b) No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

(c) Lottery tickets and shares shall only be sold by the retailer stated on the lottery retailer certificate of authority.

History.
Acts 2003, ch. 297, § 2.

4-51-118. Retailer fidelity fund — Retailer fee — Reserve account to cover losses — Retailer bond.

(a) The corporation may establish a fidelity fund separate from all other funds and shall assess each retailer a one-time fee not to exceed one hundred dollars ($100) per sales location. In accordance with § 4-51-106, the corporation is authorized to invest the funds or place such funds in one (1) or more interest-bearing accounts. Moneys deposited to the fund may be used to cover losses the corporation experiences due to nonfeasance, misfeasance or malfeasance of a lottery retailer. In addition, the funds may be used to purchase blanket bonds covering the corporation against losses from all lottery retailers. At the end of each fiscal year, the corporation shall pay to the lottery for education account any amount in the fidelity fund that exceeds five hundred thousand dollars ($500,000), and such funds shall be commingled with and treated as net proceeds from the lottery.

(b) A reserve account may be established as a general operating expense account to cover amounts deemed uncollectable. The corporation shall establish procedures for minimizing any losses that may be experienced for the foregoing reasons and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

(c)(1) The corporation may require any retailer to post an appropriate bond, as determined by the corporation, using an insurance company acceptable to the corporation; provided, however, that after one (1) full fiscal year of lottery operations the amount of any such bond shall not exceed the applicable district sales average of lottery tickets for two (2) quarterly billing periods.

(2) In its discretion, the corporation may allow a retailer to deposit and maintain with the corporation securities that are interest bearing or accruing. Securities eligible under this subdivision (c)(2) shall be limited to:

(A) Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the United States is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States government.

(3) Such securities shall be held in trust in the name of the corporation.

History.
Acts 2003, ch. 297, § 2.

4-51-119. Retail contract — Cancellation, suspension, revocation or termination.

(a) Any retail contract executed by the corporation pursuant to this chapter shall specify the reasons for which a contract may be cancelled, suspended, revoked, or terminated by the corporation, which reasons shall include, but not be limited to:

(1) Commission of a violation of this chapter, a regulation, or a policy or procedure of the corporation;

(2) Commission of a violation of title 39, chapter 17, part 6, relative to lottery offenses;

(3) Failure to accurately or timely account for lottery tickets, lottery games, revenues, or prizes as required by the corporation;

(4) Commission of any fraud, deceit, or misrepresentation;

(5) Insufficient sales;

(6) Conduct prejudicial to public confidence in the lottery;

(7) The retailer filing for or being placed in bankruptcy or receivership;

(8) Any material change as determined in the sole discretion of the corporation in any matter considered by the corporation in executing the contract with the retailer; or

(9) Failure to meet any of the objective criteria established by the corporation pursuant to this chapter.

(b) If, in the discretion of the chief executive officer, or such officer's designee, cancellation, denial, revocation, suspension, or rejection of renewal of a lottery retailer contract is in the best interest of the lottery, the public welfare, or the state, the chief executive officer, or such officer's designee, may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, any contract issued pursuant to this chapter. Such contract may, however, be temporarily suspended by the chief executive officer or a designee without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the chief executive officer. A contract may be suspended, revoked or terminated by the chief executive officer, or such officer's designee, for any one (1) or more of the reasons enumerated in subsection (a). Any hearing held shall be conducted by the chief executive officer or such officer's designee. A party to the contract aggrieved by the decision of the chief executive officer, or such officer's designee, may appeal the adverse decision to the board. Such appeal shall be pursuant to the regulations, policies, and procedures set by the board and is not subject to the Tennessee Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

History.
Acts 2003, ch. 297, § 2.

4-51-120. Lottery retailers — Fiduciary duty — Protection against loss.

(a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative. A lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b)(1) Pursuant to § 4-51-105(a)(3), the corporation shall adopt and enforce

policies designed to safeguard and limit the opportunity for loss of lottery proceeds that are not in the possession of the corporation. Such policies may include, but are not limited to:

(A) Requirements governing financial institutions into which retailers shall deposit lottery proceeds;

(B) Requirements for the establishment of separate accounts for the deposit of lottery proceeds by retailers;

(C) The timing of deposit of lottery proceeds by retailers; and

(D) The timing of withdrawal of funds from retailer accounts by the corporation.

(2) Any policies designed to safeguard and limit the opportunity for loss of lottery proceeds, and any revisions to such policies, shall be filed with the state funding board.

(c) Notwithstanding any law to the contrary, whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent or dies insolvent, the proceeds due the corporation from such person or that person's estate shall have preference over all debts or demands.

History.
Acts 2003, ch. 297, § 2.

Cross-References.
Wills, title 32.

NOTES TO DECISIONS

Analysis

1. Fiduciary Duty.
2. Bankruptcy.

1. Fiduciary Duty.

For purposes of nondischargeability of a debt in bankruptcy based on fiduciary defalcation, T.C.A. §§ 4-51-111, 4-51-120 created an express trust which imposed fiduciary duties upon the bankruptcy debtor as a lottery retailer to remit proceeds from sales of lottery tickets to the Tennessee education lottery corporation; the statutes identified the sale proceeds as the trust res, identified the corporation as the trust beneficiary, and identified the debtor as the trustee with the duties to deposit the proceeds in a trust account and remit the proceeds to the corporation. Tenn. Educ. Lottery Corp. v. Cooper (in re Cooper), 430 B.R. 480, 2010 Bankr. LEXIS 1680 (Bankr. E.D. Tenn. June 3, 2010).

Debt to state lottery corporation was nondischargeable under 11 U.S.C. § 523(a)(4), as an express trust was created between the lottery corporation and the debtors, who were lottery retailers, by virtue of T.C.A. §§ 4-51-120 and 4-51-111(a)(1), a retailer contract, a retailer application, and the lottery corporation's Retailer Rules and Regulations, and the debtors failed to protect the tickets and proceeds when they gave employees unauthorized access to a passcode. The debtors were reckless with respect to their duty to the lottery corporation, which resulted in a defalcation while acting in a fiduciary capacity. Tenn. Educ. Lottery Corp. v. Faulconer (in re Faulconer), — B.R. —, 2011 Bankr. LEXIS 3946 (Bankr. E.D. Tenn. Oct. 12, 2011).

2 Bankruptcy.

Certain payments made by Chapter 11 debtor, an authorized seller of Tennessee lottery tickets, to the operator of the lottery were preferential payments under 11 U.S.C. § 547(b) because, although the parties' contract created a trust in proceeds from lottery ticket sales, the payments were made from one of the debtor's general accounts, and the operator failed to trace the transferred funds to trust funds. Appalachian Oil Co. v. Tenn. Educ. Lottery Corp. (In re Appalachian Oil Co.), 471 B.R. 199, 2012 Bankr. LEXIS 1707 (Bankr. E.D. Tenn. Mar. 23, 2012).

Certain payments made by Chapter 11 debtor, an authorized seller of Tennessee lottery tickets, to the operator of the lottery were not preferential payments under 11 U.S.C. § 547(b) because the parties' contract created a trust in proceeds from lottery ticket sales, and the payments were made from the debtor's lottery trust account. Appalachian Oil Co. v. Tenn. Educ. Lottery Corp. (In re Appalachian Oil Co.), 471 B.R. 199, 2012 Bankr. LEXIS 1707 (Bankr. E.D. Tenn. Mar. 23, 2012).

T.C.A. § 4-51-120 and the Tennessee Lottery Corporation Retailer Contract created the required express trust for purposes of the nondischargeability of a debt for fraud or defalca-

tion while acting in a fiduciary capacity under 11 U.S.C.S. § 523. Tenn. Educ. Lottery Corp. v. Rassas (in re Rassas), — B.R. —, 2018 Bankr. LEXIS 1705 (Bankr. E.D. Tenn. June 8, 2018).

4-51-121. Lottery retailer — Rental payments based on percentage of retail sales.

If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state-operated or state-managed lottery, only the compensation received by the lottery retailer from the corporation may be considered in determining the amount of the lottery retail sales for purposes of computing the rental payment.

History.
Acts 2003, ch. 297, § 2.

4-51-122. Restrictions on sales.

(a) In accordance with title 39, chapter 17, part 6:

(1) No person shall sell a ticket or share at a price other than the price established by the corporation unless authorized in writing by the chief executive officer;

(2) No person, other than a duly certified lottery retailer, shall sell lottery tickets or shares;

(3) This subsection (a) shall not be construed to prevent a person who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares to another;

(4) This subsection (a) shall not be construed to prevent a merchant who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares as a means of promoting goods or services to customers or prospective customers subject to prior approval by the corporation; and

(5) This subsection (a) shall not be construed to prohibit the corporation from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

(b) No lottery retailer shall sell a lottery ticket or share except from the locations listed in the retailer's contract and as evidenced by the retailer's certificate of authorization unless the corporation authorizes in writing any temporary location not listed in the retailer's contract.

(c) In accordance with title 39, chapter 17, part 6, no lottery tickets or shares shall be sold to persons under eighteen (18) years of age; provided, however, that nothing in this chapter or title 39, chapter 17, part 6, prohibits the purchase of a lottery ticket or share by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment of proceeds of any lottery prize to an adult member of the person's family or a legal representative of the person on behalf of such person.

History.
Acts 2003, ch. 297, § 2.

4-51-123. Attachments, garnishments, or executions withheld from lottery prizes — Validity of lottery tickets or shares — Prize restrictions — Electronic or mechanical machines — Unclaimed prizes.

(a) Except as otherwise provided in part 2 of this chapter, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld from the proceeds of any lottery prize if timely served upon the corporation.

(b) Subsection (a) shall not apply to a retailer.

(c) The corporation shall adopt regulations, policies, and procedures to establish a system of verifying the validity of lottery tickets or shares claimed to win prizes and to effect payment of such prizes, except that:

(1) No prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. This section shall prevail over any inconsistent provisions of § 47-9-406. Notwithstanding any other provisions of this section to the contrary, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

(2) No prize shall be paid:

(A) Arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced, or issued in error, unreadable, not received, or not recorded by the corporation within applicable deadlines;

(B) Lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or

(C) Not in compliance with such additional specific regulations and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved;

(3) No particular prize in any lottery game shall be paid more than once and, in the event of a determination that more than one (1) claimant is entitled to a particular prize, the sole remedy of such multiple claimants is the award to each of them of an equal share in the prize; and

(4)(A) A holder of a winning cash ticket or share from any lottery game conducted by a drawing shall claim a cash prize within one hundred eighty (180) days after the drawing in which the cash prize was won or the end of the game as determined by the corporation, whichever is later. If a multistate or multisovereign lottery game requires, by rule or regulation, a period of time less than one hundred eighty (180) days for redemption of a winning ticket, such period shall apply for that lottery game.

(B) In any Tennessee lottery game in which the player may determine instantly if the player has won or lost, such player shall claim a cash prize within ninety (90) days, or for a multistate or multisovereign lottery game within one hundred eighty (180) days, after the end of the lottery game.

(C) If a valid claim is not made for a cash prize within the applicable period, the cash prize shall constitute an unclaimed prize for purposes of this section.

(d) No prize shall be paid upon a ticket or share purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of this section.

(e) The corporation is discharged of all liability upon payment of a prize.

(f)(1) No ticket or share shall be purchased by and no prize shall be paid to:

(A) Any member of the board of directors;

(B) Any officer or employee of the corporation; or

(C) To any member of the immediate family of any person described in subdivision (f)(1)(A) or (f)(1)(B) residing as a member of the same household in the principal place of residence of any such person.

(2) No ticket or share shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor, or to any member of the immediate family residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information that may compromise the integrity of the lottery.

(g) No lottery game utilizing an electronic or mechanical machine may use a machine that:

(1) Dispenses coins or currency; or

(2) Accepts debit or credit cards.

(h) Unclaimed prize money shall not constitute net lottery proceeds and, for the purposes of § 4-51-111(a), shall not be distributed as lottery proceeds. Title 66, chapter 29 shall not apply to unclaimed prize money of the corporation. At the end of each fiscal year, one hundred percent (100%) of any unclaimed prize money shall be deposited in the after school programs special account created in accordance with § 4-51-111; provided, however, that, if the unclaimed prizes in any fiscal year total more than eighteen million dollars ($18,000,000), then the excess shall accrue to the fund balance of the lottery for education account.

History.

Acts 2003, ch. 297, § 2; 2004, ch. 841, § 4; 2006, ch. 940, § 2; 2007, ch. 95, § 1.

Compiler's Notes.

Acts 2004, ch. 841, § 8 provided that the amendment by § 4 of that act only apply to tickets or shares sold on or after July 1, 2004.

Law Reviews.

So Your Client Just Won the Lottery. (Dan W. Holbrook), 40 No. 4 Tenn. B.J. 32 (2004).

Attorney General Opinions.

Uses of unclaimed lottery prize money, OAG 03-066, 2003 Tenn. AG LEXIS 82 (5/22/03).

4-51-124. Confidential information — Criminal history checks — Lottery integrity.

(a) All records and information in the possession of the corporation are open for inspection by members of the public unless otherwise provided by state law. The following records or information in the possession of the corporation shall

be treated as confidential and shall be exempt from § 10-7-503:

(1) Trade secrets, as such term is defined in § 47-25-1702;

(2) Security measures, systems, or procedures;

(3) Security reports;

(4) Proposals received pursuant to personal service, professional service, consultant service contract regulations, and related records, including evaluations and memoranda; provided, however, that such information shall be available for public inspection after the completion of evaluation of such proposals by the corporation. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to such bids; provided, however, that such information shall be available for public inspection after the completion of evaluation of such bids by the corporation. Internal audit reviews of the corporation including any documentation and memoranda relating to such audits; provided, however, that such information shall be available for public inspection after finalization of such audits by the corporation;

(5)(A) The following records or information of an employee of the corporation in the possession of the corporation in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public: unpublished telephone numbers; bank account information; social security number; driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job; and the same information of immediate family members or household members;

(B) Information made confidential by this subdivision (a)(5) shall be redacted wherever possible and nothing in this subdivision (a)(5) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information;

(C) Nothing in this subdivision (a)(5) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions;

(D) Nothing in this subdivision (a)(5) shall be construed to close any personnel records of an employee of the corporation that are currently open under state law;

(E) Nothing in this subdivision (a)(5) shall be construed to limit access to information made confidential under this subdivision (a)(5), when the employee expressly authorizes the release of such information;

(6) Information obtained pursuant to investigations that is otherwise confidential;

(7) Identifying information obtained from prize winners including, but not limited to, home and work addresses, telephone numbers, social security numbers, and any other information that could reasonably be used to locate the whereabouts of an individual; provided, however, that:

(A) The corporation shall disclose any relevant information to a claimant agency pursuant to part 2 of this chapter necessary to establish or enforce a claim against a debtor as defined in part 2 of this chapter;

(B) The corporation may disclose a lottery prize winner's name, home state, hometown, and, if authorized by the prize winner, any other information for marketing, advertising, or promotional purposes; and

(C) The corporation shall disclose any information not subject to subdivisions (a)(1)-(4) or (a)(6), that is otherwise necessary to assist any federal, state, or local entity in the performance of its statutory or regulatory duties;

(8) Medical records or medical information of an employee of the corporation, and medical records or information of family members of an employee of the corporation in the possession of the corporation shall be treated as confidential and shall not be open for inspection by members of the public;

(9) All information relative to the hiring or retention of the chief executive officer or president;

(10) All information relative to prospective lottery games and security and other sensitive information relative to current lottery games; and

(11) Any information concerning lottery sales made by lottery retailers unless otherwise provided by law.

(b) Meetings of the corporation shall be open to the public pursuant to title 8, chapter 44, part 1; provided, however, that portions of meetings devoted to discussing information deemed confidential pursuant to this section or deemed confidential pursuant to title 10, chapter 7, part 5 are exempt from title 8, chapter 44, part 1.

(c) Information deemed confidential pursuant to subsection (a) is exempt from § 10-7-503. Meetings or portions of meetings devoted to discussing information deemed confidential pursuant to subsection (a) are exempt from title 8, chapter 44, part 1.

(d) The corporation shall perform or cause to be performed full criminal history record checks prior to the execution of any vendor contract.

(e) The corporation, or its authorized agent, shall:

(1) Conduct criminal history record checks and credit investigations on all potential retailers; provided, however, that the corporation, or its authorized agent, may conduct or cause to be conducted criminal history record checks and credit investigations on employees of potential and authorized lottery retailers at any time;

(2) Supervise ticket or share validation and lottery drawings;

(3) Inspect, at times determined solely by the corporation, the facilities of any vendor or lottery retailer in order to determine the integrity of the vendor's product or the operations of the retailer in order to determine whether the vendor or the retailer is in compliance with its contract;

(4) Report any suspected violations of this chapter to the appropriate district attorney, or the attorney general and reporter, and to any law enforcement agencies having jurisdiction over the violation; and

(5) Upon request, provide assistance to any district attorney, the attorney general and reporter, or a law enforcement agency investigating a violation of this chapter or title 39, chapter 17, parts 5 or 6.

History.
Acts 2003, ch. 297, § 2; 2004, ch. 841, § 7.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-51-125. Intelligence sharing, reciprocal use, or restricted use agreements.

(a) The corporation may enter into intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions that provide for and regulate the use of information provided and received pursuant to the agreement.

(b) Records, documents, and information in the possession of the corporation received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the corporation with a federal department or agency, any law enforcement agency, the lottery regulation agency, or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to § 10-7-503 and shall not be released under any condition without the permission of the person or agency providing the record or information.

History.
Acts 2003, ch. 297, § 2.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-51-126. Procurement contracts — Competitive bidding.

(a)(1) All major procurement contracts shall be competitively bid pursuant to policies and procedures adopted by the board pursuant to § 4-51-104(c)(5) and approved by the procurement commission pursuant to subdivision (a)(2). Such policies and procedures shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the corporation and the best service and products for the public. The requirement for competitive bidding does not apply in the case of a single vendor having exclusive rights to offer a particular service or product.

(2)(A) Policies and procedures concerning competitive bidding of major procurement contracts for on-line and instant ticket lottery vendors and for advertising contracts estimated to be valued in excess of five hundred thousand dollars ($500,000) shall be filed with the procurement commission for review in accordance with subdivision (a)(2)(B).

(B)(i) Notwithstanding title 12, chapter 3, part 4 to the contrary, the procurement commission shall review and approve, or disapprove, such policies and procedures within five (5) working days after submission.

(ii) Upon approval, such policies and procedures shall become effective immediately and shall remain effective until amended, altered, or repealed.

(iii) If not approved, the procurement commission shall file a statement with the corporation stating its basis for nonapproval. The corporation shall make any necessary revisions and file such revised policies and procedures with the procurement commission for review and approval in a manner consistent with this subdivision (a)(2).

(iv) If the procurement commission neither approves nor disapproves of such policies and procedures within five (5) working days, such

policies and procedures shall become effective after the tenth calendar day and shall remain effective until amended, altered, or repealed.

(C) Any amendment to such policies and procedures shall be filed with the procurement commission for review and approval in a manner consistent with this subdivision (a)(2).

(b) In any bidding process, the corporation may administer its own bidding and procurement or may utilize the services of the department of general services or other state agency or subdivision thereof.

(c)(1) There shall be a lottery procurement panel consisting of the secretary of state, state treasurer and the commissioner of finance and administration. The commissioner of finance and administration shall serve as chair of the panel, and the department of finance and administration shall provide staff support to the panel as needed.

(2) Prior to issuance of procurement documents for major procurement contracts regarding on-line and instant ticket lottery vendors, and any advertising contract estimated to be valued in excess of five hundred thousand dollars ($500,000), the corporation shall file such procurement documents with the lottery procurement panel. Such panel may individually, or collectively, review the procurement document and submit comments, if any, to the corporation within five (5) working days after submission to the panel for review. After receiving comments from the panel and, in any event, after the tenth calendar day after submission to the panel for review, the corporation may:

(A) Revise such procurement document based on the comments of the panel. Any revised procurement document based on the comments of the panel shall be filed with the panel prior to issuance; or

(B) Revise such procurement document in a manner not based on the comments of the panel. Any revised procurement document not based on the comments of the panel shall be filed with the panel and reviewed by the panel in accordance with this subsection (c) prior to issuance; or

(C) Issue the procurement document without revision. Notwithstanding this subdivision (c)(2) to the contrary, the corporation may revise such procurement document prior to the fifth working day provided that the revised procurement document is filed with the panel and reviewed in accordance with this subsection (c) prior to issuance.

(3) Comments of the procurement panel, or failure of the corporation to modify procurement documents based on such comments, shall not confer any rights or constitute a basis for a challenge by a vendor to the procurement process.

(d) If the corporation determines that the requirement for competitive bidding does not apply to a major procurement contract regarding an on-line or instant ticket lottery vendor because such vendor is a single vendor having exclusive rights to offer a particular service or product, then, immediately upon making such a determination, the corporation shall file with the panel a notice of its intent not to require competitive bidding and a statement of reasons supporting that determination.

(e) Executed copies of major procurement contracts regarding on-line and instant ticket lottery vendors, and any advertising contract valued in excess of

five hundred thousand dollars ($500,000), shall be filed with the lottery procurement panel within five (5) working days of execution.

(f) Procurement documents, contracts, and any other documentation, or portions thereof, filed with the lottery procurement panel by the corporation shall be subject to § 4-51-124. Such information shall retain its confidentiality, if any, and shall only be used by the panel in the performance of its official duties.

(g)(1) Except for information deemed confidential pursuant to § 4-51-124, major procurement contracts entered into by the corporation regarding on-line and instant ticket lottery vendors, and any advertising contract valued in excess of five hundred thousand dollars ($500,000), shall be posted, via link to "Major Procurement Contracts," on the website of the Tennessee education lottery corporation. The corporation may post additional major procurement contracts.

(2) The corporation shall post all major procurement contract procurement documents, via link to "Major Procurement Opportunities," on the website of the Tennessee education lottery corporation.

History.
Acts 2003, ch. 297, § 2; 2011, ch. 295, § 19.

Compiler's Note.
The Tennessee education lottery corporation website may be found at the following url: https://tnlottery.com/.

Cross-References.
Confidentiality of public records, § 10-7-504.

Attorney General Opinions.
Tennessee education lottery corporation: contract amendments. OAG 10-73, 2010 Tenn. AG LEXIS 79 (5/21/10).

4-51-127. Appealing final actions of the board.

(a) Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by a final action of the board may appeal that decision to the chancery court of Davidson County.

(b) The chancery court of Davidson County shall hear appeals from decisions of the board and based upon the record of the proceedings before the board may reverse the decision of the board only if the appellant proves the decision to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the board; or

(5) Contrary to the United States Constitution or the Constitution of Tennessee or this chapter.

(c) The chancery court may remand an appeal to the board to conduct further hearings.

(d) Any person who appeals the award of a major procurement contract for the supply of a lottery ticket system, share system, or an on-line or other mechanical or electronic system shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award is upheld. Costs of appeal and defense shall include, but are not limited to, court costs, bond and attorney's fees; provided that, upon motion of the corporation, such costs shall also include any loss of income to the corporation resulting from institution of the appeal if the court finds the appeal to have been frivolous.

History.
Acts 2003, ch. 297, § 2.

4-51-128. Disposition of funds.

(a) The corporation may borrow, or accept and expend, in accordance with this chapter, such moneys as may be received from any source, including income from the corporation's operations, for effectuating its corporate purposes, including the payment of the initial expenses of initiation, administration, and operation of the corporation and the lottery, and other lottery related purposes, including the payment of the initial expenses of initiation, administration, and operation of educational programs and purposes.

(b) The corporation shall be self-sustaining and self-funded. Moneys in the state general fund shall not be used or obligated to pay the expenses of the corporation or prizes of the lottery and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any moneys other than moneys credited to the corporation operating account.

(c) The corporation may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The corporation may make procurements that integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

History.
Acts 2003, ch. 297, § 2.

4-51-129. Financial reports, audits, and records.

To ensure the financial integrity of the lottery, the corporation, through its board of directors, shall:

(1) Submit quarterly and annual reports to the governor, the state and local government committee of the senate, the state government committee of the house of representatives, the comptroller of the treasury and the state treasurer, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall additionally describe the organizational structure of the corporation and summarize the functions performed by each organizational division within the corporation;

(2) Adopt a system of internal audits; all audits performed by the internal audit staff of the corporation shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9);

(3) Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the corporation;

(4)(A) Be subject to audits by the comptroller of the treasury in accor-

dance with § 8-4-109. Such audits may be undertaken at any time at the sole discretion of the comptroller; provided, however, that the comptroller shall conduct, or contract for, an annual financial audit of the corporation. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to the corporation's books, records, and accounts whenever deemed necessary by such office. The comptroller of the treasury, or the comptroller's designated representatives, shall have access to any and all of the records of the corporation's distributing agencies, lottery vendors or lottery retailers that relate to the operation, administration or promotion of the lottery. Except as provided in subdivision (4)(B), the corporation may, with prior notice to the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for additional audits concerning any phase of the operations of the corporation; provided, however, that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. The corporation shall be responsible, as an operating expense, for reimbursement of the costs of audits prepared by the comptroller of the treasury and for the payment of fees for audits prepared by a licensed independent certified public accountant or firm. All audits shall be prepared in accordance with generally accepted governmental auditing standards;

(B) The corporation may, with prior approval of the comptroller of the treasury, contract with a licensed independent certified public accountant or firm for an additional annual financial audit of the corporation; provided, however, that the licensed certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. If a licensed independent certified public accountant or firm is employed pursuant to this subdivision (4)(B), the audit contract between the corporation and the licensed independent certified public accountant or firm shall be on contract forms prescribed by the comptroller of the treasury. The corporation shall be responsible, as an operating expense, for the payment of fees for audits prepared pursuant to this subdivision (4)(B). Such audits shall be prepared in accordance with generally accepted governmental auditing standards and shall meet minimum audit standards prescribed by the comptroller of the treasury;

(C) A copy of any audit performed by the comptroller of the treasury or any independent certified public accountant or firm shall be transmitted to the governor, the speaker of the senate, the speaker of the house of representatives, the chairs of the state and local government committee of the senate and the state government committee of the house of representatives, the state treasurer and, if applicable, the comptroller of the treasury;

(5) Submit to the department of finance and administration, the office of legislative budget analysis and the comptroller of the treasury by June 30 of each year a copy of the annual operating budget for the corporation for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the department of finance and administration;

(6) For informational purposes only, submit to the department of finance and administration on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net lottery proceeds to be deposited into the lottery for education account during the succeeding fiscal year. This budget shall be on such forms as prescribed by the department of finance and administration; and

(7) Adopt the same fiscal year as that used by state government.

History.

Acts 2003, ch. 297, § 2; 2011, ch. 410, § 9(c); 2012, ch. 925, § 17; 2013, ch. 236, § 72.

Compiler's Notes.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Cross-References.

Licensing of accountants, § 62-1-101 et seq.

4-51-130. Ineligibilty.

(a) No member of the general assembly, the governor, a member of the governor's cabinet or a cabinet-level member of the governor's staff shall serve as a director or employee of the corporation while holding such position in state government.

(b) No member of the general assembly, the governor, a member of the governor's cabinet or a cabinet-level member of the governor's staff shall serve as an employee, or otherwise receive compensation or other benefit for consultation or services rendered directly or indirectly through a partnership, corporation or other business entity, from an on-line or instant ticket lottery vendor of the Tennessee education lottery corporation or an on-line or instant ticket lottery vendor seeking to become a vendor of the Tennessee education lottery corporation, while holding such position in state government. Nothing in this subsection (b) shall be construed as prohibiting continued employment of such official by a partnership, corporation, or other business entity receiving compensation from an on-line or instant ticket lottery vendor if:

(1) Such official has no direct or indirect contact with an on-line or instant ticket lottery vendor; and

(2) Such official does not share in any compensation or any benefit received from an on-line or instant ticket lottery vendor.

(c) This section shall not apply to any employee of the corporation or of an on-line or instant ticket lottery vendor who, subsequent to such employment, seeks election to the general assembly or the office of governor. No provision of this subsection (c) shall be construed as prohibiting such employee from continuing in such employment during the individual's term in office as a member of the general assembly.

(d) This section also applies to any children residing in the primary residence and the spouse of any member of the general assembly, the governor, a member of the governor's cabinet or a cabinet-level member of the governor's staff.

(e) A violation of this section is a Class C misdemeanor punishable only by a fine of one thousand dollars ($1,000).

History.
Acts 2003, ch. 297, § 2.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

Attorney General Opinions.
Legislator's conflict of interest: lottery advertising, OAG 04-002, 2004 Tenn. AG LEXIS 2 (1/06/04).

4-51-131. Corporation participation in the Tennessee consolidated retirement system.

(a) The Tennessee education lottery corporation shall be eligible to be a participating employer in the Tennessee consolidated retirement system upon:

(1) Passage of a resolution by the corporation's board of directors authorizing an actuarial study; and

(2) Passage of a resolution by the corporation's board of directors authorizing such participation and accepting the liability as a result of the participation by its full-time employees.

(b) The employees of the corporation shall make the same contributions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system under this part.

(c) The employees shall be entitled to credit for prior service as approved by the board of directors of the corporation under the same provisions that apply to employees of local governments.

(d) The retirement system shall not be liable for the payment of retirement allowances or other payments on account of employees of the corporation or their beneficiaries for which reserves have not been previously created from funds contributed by the corporation, its employees or the corporation and its employees.

(e) In case of the withdrawal of the corporation as a participating employer, the benefits of the members and beneficiaries shall be determined in accordance with § 8-35-211.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the corporation.

History.
Acts 2003, ch. 297, § 4.

Cross-References.
Law enforcement efforts, § 39-15-413.
Lotteries, Tenn. Const., art. XI, § 5.
Lotteries, chain letters and pyramid clubs, § 39-17-506.
Lottery not gambling, § 8-47-127.
Lottery sales, title 39, ch. 17, part 6.
Possession of gambling device or record, forfeiture, § 39-17-505.
State lottery proceeds, title 49, ch. 4, part 9.
Tennessee Lottery Funds for Education Projects Loan Act of 2003, title 4, chapter 31, part 10.

4-51-132. Preemption.

The general assembly, by enacting this chapter and title 39, chapter 17, part 6, intends to preempt any other regulation of the area covered by this chapter and title 39, chapter 17, part 6. No political subdivision or agency may enact or enforce a law, ordinance, resolution or regulation that regulates or prohibits any conduct in the area covered by this chapter and title 39, chapter 17, part 6.

History.
Acts 2003, ch. 297, § 2.

4-51-133. List of individuals collecting more than $3,500.

On a monthly basis, the Tennessee education lottery corporation shall provide to the department of human services the following information of any individual collecting a prize of more than three thousand five hundred dollars ($3,500):

(1) Name;
(2) Prize amount; and
(3) Any other available identifying information.

History.
Acts 2017, ch. 191, § 2; 2020, ch. 622, § 1.

Compiler's Notes.
Former § 4-51-133 concerned the select committee on the Tennessee Education Lottery Corporation.

Acts 2017, ch. 191, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Program Integrity Act of 2017."

4-51-134. Participation in "Amber Alert."

The Tennessee education lottery corporation shall formulate and implement a plan, in cooperation with the Tennessee bureau of investigation, for the Tennessee lottery's participation in the state's AMBER ALERT program via on-line lottery ticket terminals and all other appropriate media and technology at the corporation's disposal.

History.
Acts 2004, ch. 841, § 5.

4-51-135. Immunity of corporation — Corporation employees considered state employees — Property and casualty insurance.

(a) The corporation is immune from all tort causes of action. Notwithstanding § 4-51-101(c) or any other law to the contrary, the corporation shall be considered a state agency for purposes of title 9, chapter 8, parts 3 and 4; provided, that the corporation shall not be considered a state agency for purposes of contract and workers' compensation actions. Actions for workers' compensation and contract actions, as provided in this chapter, may be brought against the corporation only in the chancery court for Davidson County.

(b) Corporation employees shall be considered state employees for purposes of §§ 8-42-103, 9-8-112 and 9-8-307; provided, that such employees shall not be considered state employees for workers' compensation coverage, pursuant to § 9-8-307(a)(1)(K).

(c) The corporation shall have the authority to participate in the department of treasury's property/casualty risk program pursuant to title 12, chapter 4, part 10, for all buildings and building contents owned by the corporation, or that the corporation is contractually obligated to insure.

(d) The corporation shall pay to the state, as a premium, any contribution required by the risk management fund under this section.

(e) It is the legislative intent that the state shall incur no additional liability as a result of this section.

(f) This section additionally applies to those activities of the corporation relating to sports wagering under the Tennessee Sports Gaming Act, compiled in part 3 of this chapter.

History.
Acts 2005, ch. 417, § 7; 2019, ch. 507, § 4.

Compiler's Notes.
Acts 2019, ch. 507, § 7 provided that the act take effect July 1, 2019, the public welfare requiring it. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

4-51-136. Lottery ticket litter reduction program.

The corporation shall establish a lottery ticket litter reduction program. In development of the program, the corporation is encouraged to examine successful litter reduction and recycling programs as established in other jurisdictions, including, but not limited to, the use of second chance drawings, nonwinning ticket collection incentives and other promotional recycling activities.

History.
Acts 2006, ch. 893, § 1.

Cross-References.
Litter control, title 39, ch. 14, part 5.

4-51-137. Establishment of mechanism for lottery ticket winner to make charitable contribution.

The board, in coordination with the secretary of state, shall establish a mechanism whereby a lottery ticket winner of a drawing-style game may, upon redemption of prize money of one million dollars ($1,000,000) or more, make a charitable contribution of ten percent (10%) of the total prize money, either before taxes or after payment of taxes and fees, to a 501(c)(3) or 501(c)(19) nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) or Section 501(c)(19) of the Internal Revenue Code (26 U.S.C. § 501(c)(19)), as applicable. The board shall carry out its duties under this section no later than January 1, 2019. This section does not apply to instant or scratch-off games.

History.
Acts 2018, ch. 1022, § 1.

PART 2

DEBTORS OWING MONEY TO THE STATE

4-51-201. Purpose — Construction.

The purpose of this part is to establish a policy and to provide a system whereby all claimant agencies of this state in conjunction with the corporation shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for prizes under part 1 of this chapter

from the corporation. It is also the purpose of this part to establish procedures for setting off against any such prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act. It is the intent of the general assembly that this part be liberally construed to effectuate these purposes.

History.
Acts 2003, ch. 297, § 2.

4-51-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Claimant agency" means any state agency, department, board, bureau, commission, or authority to which an individual owes a debt or that acts on behalf of an individual to collect a debt;

(2) "Debt" means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law, regardless of whether there is an outstanding judgment for the sum or any sum that is due and owing any person and is enforceable by the state or any of the claimant agencies of the state. "Debt" specifically includes, but is not limited to, uncollected amounts owed by any person due to judgments for overdue child support as provided by title 36, chapter 5;

(3) "Debtor" means any individual owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy. "Debtor" specifically includes, but is not limited to, all persons who are required by any order to pay child support and whose payments are overdue as provided by title 36, chapter 5, and which payments have become judgments by operation of law pursuant to § 36-5-101(a)(5), or by law in any other state or territory, or by judgment of a court in this or any other state or territory; and

(4) "Prize" means the proceeds of any lottery prize awarded under part 1 of this chapter.

History.
Acts 2003, ch. 297, § 2.

4-51-203. Collection remedy.

The collection remedy authorized by this part is in addition to and not in substitution for any other remedy available by law.

History.
Acts 2003, ch. 297, § 2.

Cross-References.
Default and enforcement of security interest, § 47-9-601 et seq.

4-51-204. List of debtors — Withholding winnings — Ranking of liens.

(a)(1) Any claimant agency may submit to the corporation a list of the names of all persons owing debts in excess of one hundred dollars ($100) to

such claimant agency or to persons on whose behalf the claimant agency is acting. The full amount of the debt shall be collectable from any lottery winnings without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings. Such list, filed by paper or by electronic means, shall constitute a valid lien upon and claim of lien against the lottery winnings of any debtor named in such list. The list shall contain the names of the debtors, their social security numbers, if available, and any other information that would assist the corporation in identifying the debtors named in the list.

(2) The corporation may establish with any claimant agency that has such capability an automated process utilizing the corporation's and the claimant agency's databases to effectuate this part including, but not limited to, a computerized matching process.

(b)(1) The corporation is authorized and directed to withhold any winnings subject to the lien created by this part and send notice to the winner by certified mail, return receipt requested, of such action and the reason the winnings were withheld; provided, however, that if the winner appears and claims winnings in person, the corporation shall notify the winner at that time by hand delivery of such action.

(2) If the debtor does not protest the withholding of such winnings in writing within thirty (30) days of such notice, the corporation shall pay the funds over to the claimant agency. Except as provided in subdivision (b)(3), if the debtor protests the withholding of such winnings within thirty (30) days of such notice, the corporation shall file an action in interpleader in the circuit court of the county in which the debtor resides if the debtor resides in this state. If the debtor does not reside in this state, such action shall be filed in Davidson County. The corporation shall pay the disputed sum into the clerk of the court and give notice to the claimant agency and debtor of the initiation of such action.

(3) For all persons who are debtors of the department of human services due to overdue child support, the corporation shall withhold all winnings subject to administrative proceedings in accordance with title 36, chapter 5 and the rules of the department.

(c) The liens created by this part shall rank among themselves as follows:

(1) Taxes due the state;

(2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The corporation shall not be required to deduct claimed debts from prizes paid out by retailers or entities other than the corporation.

(e) Any list of debt provided pursuant to this part shall be provided periodically as the corporation shall provide by rules and regulations and the corporation shall not be obligated to retain such lists or deduct debts appearing on such lists beyond the period determined by such rules and regulations; provided, however, that lists provided to the corporation through an automatic data match process shall be maintained on an ongoing basis to enable the continuous monitoring and withholding of lottery winnings for debts due any claimant agency.

(f) Pursuant to § 4-51-105(a)(3), the corporation is authorized to prescribe

forms and promulgate rules and regulations that it deems necessary to carry out this part.

(g) The corporation and any claimant agency shall incur no civil or criminal liability for good faith adherence to this section.

(h) The claimant agency shall pay the corporation for all costs incurred by the corporation in setting off debts in the manner provided in this part.

History.
Acts 2003, ch. 297, § 2.

4-51-205. Confidential information.

(a) Pursuant to § 4-51-124, the corporation shall provide to a claimant agency all information necessary to accomplish and effectuate the intent of this part.

(b) The information obtained by a claimant agency from the corporation in accordance with this part shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to a civil penalty of fifty dollars ($50.00), which shall be collected by the claimant agency as otherwise provided by law.

History.
Acts 2003, ch. 297, § 2.

Cross-References.
Confidentiality of public records, § 10-7-504.

4-51-206. Application.

This part shall only apply to prizes of six hundred dollars ($600) or more.

History.
Acts 2003, ch. 297, § 2.

PART 3

TENNESSEE SPORTS GAMING ACT [EFFECTIVE UNTIL JANUARY 1, 2022; SEE COMPILER'S NOTES.]

4-51-301. Short title. [Effective until January 1, 2022; See Compiler's Notes.]

This part shall be known and may be cited as the "Tennessee Sports Gaming Act."

History.
Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.
This section was transferred to § 4-49-101 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time

at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act, the act took effect May 27, 2021.

4-51-302. Part definitions. [Effective until January 1, 2022; See Compiler's Notes.]

As used in this part, unless the context otherwise requires:

(1) "Adjusted gross income" means the total of all money paid to a licensee as bets minus the total amount paid out to winning bettors over a specified period of time, which includes the cash equivalent of any merchandise or thing of value awarded as a prize;

(2) "Bettor" means a person who is:

(A) Twenty-one (21) years of age or older;

(B) Physically present in this state when placing a wager with a licensee; and

(C) Not prohibited from placing a wager under § 4-51-312;

(3) "Bond" means a bond held in escrow for the purpose of maintaining adequate reserves to account for losses suffered by a licensee and owed to bettors;

(4) "Cheating" means improving the chances of winning or of altering the outcome by deception, interference, or manipulation of a sporting event or of any equipment, including software pertaining to or used in relation to the equipment, used for or in connection with the sporting event on which wagers are placed or are invited, including attempts and conspiracy to cheat;

(5) "Collegiate" means belonging to, or involving, a public or private institution of higher education;

(6) "Collegiate sporting event" means a sporting or athletics event involving a sports or athletics team of a public or private institution of higher education;

(7) "Council" means the Tennessee education lottery corporation sports

wagering advisory council;

(8) "E-sport" means any multiplayer video game played competitively for spectators, either in-person or via remote connection, in which success principally depends upon the superior knowledge, training, experience, and adroitness of the players;

(9) "Fixed-odds betting" means bets made at predetermined odds or on the spread where the return to the bettor is unaffected by any later change in odds or the spread;

(10) "Future bet" means a wager made on the occurrence of an event in the future relating to a sporting event;

(11) "Interactive sports wagering" means placing a wager on a sporting event via the internet, a mobile device, or other telecommunications platform;

(12) "License" means a license to accept wagers from bettors on sporting events issued under § 4-51-317;

(13) "Licensee" means a person who holds a license issued under § 4-51-317;

(14) "Live betting" means a type of wager that is placed after the sporting event being wagered on has commenced and whose odds on events occurring are adjusted in real time;

(15) "Minor" means a person who is less than twenty-one (21) years of age;

(16) "Money line" means the fixed odds in relation to a dollar amount that a team or person participating in a sporting event will win outright, regardless of the spread;

(17) "Official league data" means statistics, results, outcomes, and other data related to a sporting event obtained pursuant to an agreement with the relevant governing body of a sport or sports league, organization, or association whose corporate headquarters are based in the United States, or an entity expressly authorized by such governing body to provide such information to licensees for purposes of live betting;

(18) "Online sports wagering platform" means the combination of hardware, software, and data networks used to manage, administer, or control sports wagering and any associated wagers accessible by any electronic means, including mobile applications and internet websites accessed via a mobile device or computer;

(19) "Pari-mutuel betting" means a type of bet in which all wagers on a particular occurrence are pooled and winnings are paid in accordance with the size of the pool and the number of winners;

(20) "Parlay bet" means a single wager that incorporates two (2) or more individual bets for purposes of earning a higher payout if each bet incorporated within the wager wins;

(21) "Professional sports team" means a major or minor league professional baseball, football, basketball, soccer, or hockey franchise, or a professional motor sport;

(22) "Proposition bet" means a wager made regarding the occurrence or nonoccurrence during a sporting event of an event that does not directly affect the final outcome of the sporting event;

(23) "Sporting event" means any professional sporting or athletic event, including motorsports and e-sports, any collegiate sporting or athletic event,

or any Olympic sporting or athletic event sanctioned by a national or international organization or association. "Sporting event" does not include horse racing;

(24) "Sports governing body" means the organization, league, or association that oversees a sport and prescribes final rules and enforces codes of conduct with respect to such sport and participants therein;

(25) "Spread" means the predicted scoring differential between two (2) persons or teams engaged in a sporting event;

(26) "Supervisory employee" means a principal or employee having the authority to act on behalf of a licensee or whose judgment is being relied upon to manage and advance the business operations of a licensee;

(27) "Vendor" means a contractor, subcontractor, or independent contractor hired, or contracted with, by the corporation or a licensee for the purpose of facilitating the business of the corporation or licensee under this part. "Vendor" does not include a lottery system vendor as that term is used under part 1 of this chapter; and

(28) "Wager" or "bet" means a sum of money that is risked by a bettor on the unknown outcome of one (1) or more sporting events, including, but not limited to, the form of fixed-odds betting, a future bet, live betting, a money line bet, pari-mutuel betting, parlay bet, pools, proposition bet, spread bet, or in any other form or manner as authorized by rule of the board.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-102 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative du-

ties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-303. Restrictions on and regulation of licenses. [Effective until January 1, 2022; See Compiler's Notes.]

A person issued a license to offer interactive sports wagering under this part is subject to all provisions of this part relating to licensure, regulation, and civil and criminal penalties.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-103 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-304. Taxes — Collection — Disposition of taxes. [Effective until January 1, 2022; See Compiler's Notes.]

(a) It is a taxable privilege to offer sports wagering in this state under a license issued in accordance with this part. Notwithstanding any state law to the contrary, a licensee shall only pay a privilege tax on its adjusted gross income in accordance with this section.

(b) There is imposed upon the adjusted gross income of a licensee a privilege tax of twenty percent (20%).

(c) The tax imposed under this section must be paid monthly by a licensee based on its monthly adjusted gross income for the immediately preceding

calendar month. The tax must be paid to the corporation in accordance with rules promulgated by the corporation.

(d) For the purpose of enforcing this part and ascertaining the amount of tax due under this section, the corporation may competitively procure the services of a vendor to provide a central accounting and reporting system, to ascertain all bets wagered minus the total amount paid out to winning bettors daily, and such other information as the corporation may require. All licensees shall utilize such central accounting and reporting system.

(e)(1) Eighty percent (80%) of the privilege tax collected under this section must be distributed by the corporation to the state treasurer for deposit into the lottery for education account created under § 4-51-111. Funds deposited under this subdivision (e)(1) must be accounted for separately by the corporation from funds collected by the corporation for the lottery. Section 4-51-111 is otherwise inapplicable to taxes collected and deposited under this subdivision (e)(1).

(2) Notwithstanding § 4-51-111, fifteen percent (15%) of the privilege tax collected under this section must be distributed by the corporation quarterly to the state treasurer for deposit into the general fund, to be remitted quarterly to each local government in this state on a per capita basis, as determined by population based on the last federal census. For purposes of calculating the allocation, the population of counties excludes the population of each municipality within the boundaries of the county. Funds remitted to a local government under this subdivision (e)(2) must be allocated to the county or city general fund, as applicable, to be used for local infrastructure projects, including, without limitation, transportation and road projects and public buildings.

(3) Notwithstanding § 4-51-111, five percent (5%) of the privilege tax collected under this section must be distributed by the corporation to the state treasurer and allocated to the department of mental health and substance abuse services to use in the manner prescribed by § 4-51-319.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-104 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administra-

tion of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-305. Lottery corporation sports wagering advisory council — Creation — Membership — Terms. [Effective until January 1, 2022; See Compiler's Notes.]

(a) There is created a lottery corporation sports wagering advisory council to assist the corporation with sports wagering activities.

(b) The council is composed of nine (9) members appointed as follows:

(1) Three (3) by the governor, with one (1) member from each grand division of this state;

(2) Three (3) by the speaker of the senate, with one (1) member from each grand division of this state; and

(3) Three (3) by the speaker of the house of representatives, with one (1) member from each grand division of this state.

(c) Prior to the appointment of a person to the council, the appointing authority shall submit the name of the potential member to the Tennessee bureau of investigation. The bureau shall conduct a criminal records check on all such persons pursuant to § 38-6-109. The bureau may contract with any other law enforcement agency to assist in such investigation. Such potential member shall supply a set of fingerprints upon request and in the manner requested by the investigating entity.

(d) The term of each member begins on July 1. For purposes of staggering the terms of the council, each appointing authority shall appoint one (1) member to a term of four (4) years, one (1) member to a term of three (3) years, and one (1) member to a term of (2) years.

(e) After the initial terms, the term of an appointed or reappointed member is four (4) years. However, the term of a reappointed member or a new appointee replacing an existing member begins on the day of the expiration of the prior term.

(f) Notwithstanding subsection (e), at the end of the member's term, the member shall continue to serve until a replacement is appointed by the appropriate appointing authority.

(g)(1) Each member of the council must:

(A) Be a citizen of the United States;

(B) Be, and remain, a resident of this state; and

(C) Possess and demonstrate honesty, integrity, and good character.

(2) A person is not eligible for appointment to the council if the person:

(A) Holds any elective office in state government;

(B) Is an officer or official of any political party;

(C) Has a direct pecuniary interest in the sports wagering or gaming industry;

(D) Has been convicted of a felony;

(E) Has been convicted of a misdemeanor involving gambling, theft, computer-related offenses, forgery, perjury, dishonesty, or unlawfully selling or providing a product or substance to a minor;

(F) Has been convicted of any violation under this chapter; or

(G) Has been convicted of any offense in a federal court, military court, or court of another state, territory, or jurisdiction that under the laws of this state would disqualify such person pursuant to subdivisions (g)(2)(D)–(F).

(h) In making appointments to the council, the appointing authorities shall strive to ensure that the council membership is diverse in educational background, ethnicity, race, gender, and geographic residency and has experience in:

(1) The sports industry;

(2) Accounting; and

(3) Law enforcement.

(i) A vacancy on the council must be filled for the balance of the unexpired term in the same manner as the original appointment.

(j) Five (5) members of the council constitute a quorum for the purposes of voting and conducting the business of the council.

(k) The council shall elect a chair from among its membership. The chair shall serve in that capacity for one (1) year and is eligible for reelection. The chair shall preside at all meetings and shall have all the powers and privileges of other members.

(*l*) The council shall meet not less than quarterly, and may hold additional regular and special meetings at the call of the board.

(m) The members must be reimbursed for per diem and travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(n) The council shall:

(1) Advise the board of best practices with respect to sports wagering;

(2) Provide administrative and technical assistance to the corporation with respect to sports wagering; and

(3) Carry out any other duties of the council as prescribed by the board or this part.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-105 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or per-

manent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

4-51-306. Powers and duties of corporation and board — Adoption of rules. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The corporation and board shall enforce this part and supervise compliance with laws and rules relating to the regulation and control of wagering on sporting events in this state.

(b) The board shall promulgate rules in accordance with this part. Rules of the board promulgated under this part must be adopted, amended, or repealed in the same manner as the board adopts, amends, and repeals bylaws and regulations of the board for purposes of regulating the corporation's affairs and the conduct of corporate business.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-106 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected

for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-307. Removal of member. [Effective until January 1, 2022; See Compiler's Notes.]

A member of the council may be removed from the council by the appointing authority if, in the opinion of the appointing authority, the member has committed misfeasance or malfeasance in office or neglect of duty.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-107 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

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"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-308. Reports of board. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The board shall prepare and submit an annual report to the governor, the speaker of the senate, and the speaker of the house of representatives containing the following information:

(1) The number of active licensees;

(2) The aggregate gross and net revenue of all licensees; and

(3) The financial impact on this state and local governments as the result of the sports wagering industry in this state.

(b) The report prepared under subsection (a) must be submitted not later than September 30 of each year. A report submitted under subsection (a) may be submitted electronically.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-108 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-309. Requirements for escrow account — Insurance — Cash-on-hand. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The board shall prescribe by rule:

(1) The amount of a bond in escrow and the amount of cash that must be kept on hand to ensure that there exists adequate reserves to pay off bettors;

and

(2) Any insurance requirements for a licensee.

(b) The licensee may maintain the bond at any bank lawfully operating in this state, and the licensee must be the beneficiary of any interest accrued thereon.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-109 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-310. Financial practices — Audits of licensees — Post-employment restrictions. [Effective until January 1, 2022; See Compiler's Notes.]

The board shall prescribe by rule:

(1) Minimum requirements by which each licensee must exercise effective control over its internal fiscal affairs, including, without limitation, requirements for:

(A) Safeguarding assets and revenues, including evidence of indebtedness;

(B) Maintenance of reliable records relating to accounts, transactions, profits and losses, operations, and events; and

(C) Global risk management;

(2) Requirements for internal and independent audits of licensees;

(3) The manner in which periodic financial reports must be submitted to the board from each licensee, including the financial information to be included in the reports;

(4) The type of information deemed to be confidential financial or proprietary information that is not subject to any reporting requirements under this part;

(5) Policies, procedures, and processes designed to mitigate the risk of cheating and money laundering; and

(6) Any post-employment restrictions necessary to maintain the integrity of sports wagering in this state.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-110 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2019, ch. 507, July 1, 2019; provided that, for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of this act, the act took effect on May 25, 2019. See Compiler's Notes.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-311. Persons authorized to engage in sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]

(a) Except for those persons ineligible to place bets under § 4-51-312, a person who is twenty-one (21) years of age or older and who is physically located in this state may place a wager in the manner authorized by law.

(b) A licensee shall ensure that all wagers accepted in this state are from qualified bettors and in accordance with this part.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-111 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-312. Persons ineligible to place a bet or wager. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The following persons or categories of persons shall not, directly or indirectly, wager or bet on a sporting event in this state:

(1) Any member, officer, or employee of the council, board, or corporation;

(2) With respect to a licensee, any principal owner, partner, member of the board of directors, officer, or supervisory employee;

(3) With respect to a vendor of a licensee, any principal owner, partner, member of the board of directors, officer, or supervisory employee;

(4) Any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a licensee, if the person is directly involved in the licensee's operation of sports wagering or the processing of sports wagering claims or payments through the licensee's online sports wagering platform;

(5) Any person subject to a contract with the board if the contract contains a provision prohibiting the person from participating in sports wagering;

(6) Any person with access to information that is known exclusively to a person who is prohibited from placing a wager in this state under this section;

(7) Any amateur or Olympic athlete if the wager is based on the sport or athletic event in which the athlete participates and that is overseen by the athlete's sports governing body;

(8) Any professional athlete if the wager is based on any sport or athletic event overseen by the athlete's sports governing body;

(9) Any owner or employee of a team, player, umpire or sports union personnel, or employee, referee, coach, or official of a sports governing body, if the wager is based on a sporting event overseen by the person's sports governing body;

(10) Any trustee or regent of a governing board of a public or private institution of higher education;

(11) Any member of an advisory board established under title 49, chapter 9, part 5;

(12) Any person prohibited by the rules of a governing body of a collegiate sports team, league, or association from participating in sports wagering activities;

(13) With respect to a student or an employee of a public or private institution of higher education, any person who has access to material nonpublic information concerning a student athlete or team, and the information is relevant to the outcome of a sporting event; provided, that the person is only prohibited from using the information to place a wager on a collegiate sporting event; and

(14) Any person having the ability to directly affect the outcome of a sporting event.

(b) The board may prescribe by rule additional categories of persons who are prohibited from placing a wager in this state.

(c) The corporation shall maintain a confidential registry of persons and categories of persons who are ineligible to place a wager in this state and shall provide the registry to each licensee in this state. The corporation shall provide each updated registry to the licensees as soon as practicable. Each licensee shall maintain the registry provided by the corporation confidentially.

(d) A violation of subsection (a) is:

(1) For a first offense, a Class C misdemeanor;

(2) For a second offense, a Class B misdemeanor; and

(3) For a third or subsequent offense, a Class A misdemeanor.

(e) As used in this section, "material nonpublic information" has the same meaning as defined in § 4-51-330(d).

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-112 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee edu-

cation lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

Penalties for Class A, B and C misdemeanors, § 40-35-111.

4-51-313. Wagers as contracts. [Effective until January 1, 2022; See Compiler's Notes.]

Notwithstanding § 29-19-101, each wager placed in accordance with this part is deemed to be an enforceable contract.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-113 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with

the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-314. Wagers prohibited. [Effective until January 1, 2022; See Compiler's Notes.]

(a)(1) The board shall, by rule, prohibit wagering on:

(A) Injuries, penalties, and other types or forms of wagering under this part that are contrary to public policy, unfair to consumers, or deemed to violate the Constitution of Tennessee, Article XI, § 5; and

(B) Individual actions, events, statistics, occurrences, or nonoccurrences to be determined during a collegiate sporting event, including, without limitation, in-game proposition bets on the performance or nonperformance of a team or individual participant during a collegiate sporting event.

(2) A licensee may only offer parlay and proposition bets of the type or category as prescribed by rule of the board. The board shall prescribe by rule the types and categories of parlay and proposition bets that may be offered in this state, if any.

(b)(1) A licensee, professional sports team, league, or association, or institution of higher education may submit to the board in writing a request to prohibit a type or form of wagering, or to prohibit a category of persons from wagering, if the licensee, team, league, association, or institution believes that such wagering by type, form, or category is contrary to public policy, unfair to consumers, or affects the integrity of a particular sport or the sports betting industry.

(2) The board shall, upon a demonstration of good cause from the requestor, grant the request. The board shall respond to a request pursuant to this subsection (b) concerning a particular event before the start of the event, or if it is not feasible to respond before the start of the event, as soon as practicable.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-114 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-

306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-315. Integrity of sports wagering — Public interest. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The board, council, licensees, and vendors shall cooperate with investigations conducted by sports governing bodies and law enforcement agencies, including, but not limited to, providing or facilitating the provision of account-level betting information and data files relating to persons placing wagers.

(b) Licensees shall immediately report to the board any information relating to:

(1) Criminal or disciplinary proceedings commenced against the licensee in connection with its operations;

(2) Abnormal betting activity or patterns that may indicate a concern with the integrity of a sporting event;

(3) Any potential breach of a sports governing body's internal rules and codes of conduct pertaining to sports wagering;

(4) Conduct that corrupts the betting outcome of a sporting event for purposes of financial gain, including match fixing; and

(5) Suspicious or illegal wagering activities, including cheating, the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, using agents to place wagers, and using false identification.

(c) Licensees shall also immediately report information relating to conduct described in subdivisions (b)(2)–(4) to the relevant sports governing body.

(d) Licensees shall share with the board, in real time and at the account level, information regarding a bettor, amount and type of bet, the time the bet was placed, the location of the bet, including the internet protocol address if applicable, the outcome of the bet, and records of abnormal betting activity. Information shared under this subsection (d) must be submitted in the form and manner as required by rule of the board.

(e) If a sports governing body has notified the board that real-time information sharing for wagers placed on its sporting events is necessary and desirable, licensees shall share the same information with the sports governing body or its designee with respect to wagers on its sporting events. Such information may be provided in anonymized form and may be used by a sports governing body solely for integrity purposes.

(f) In addition to its specific rulemaking authority under this part, the board

may promulgate rules it deems necessary to maintain the integrity of sports wagering in this state and to protect the public interest.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-115 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-316. Official league data. [Effective until January 1, 2022; See Compiler's Notes.]

A licensee shall exclusively use official league data for purposes of live betting unless the licensee can demonstrate to the board that the governing body of a sport or sports league, organization, or association or other authorized entity cannot provide a feed of official league data for live betting in accordance with commercially reasonable terms, as determined by the board.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-116 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or per-

manent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-317. Applying for licenses — Fees. [Effective until January 1, 2022; See Compiler's Notes.]

(a) An applicant for a license shall submit an application on a form, in such manner, and in accordance with such requirements as may be prescribed by rule of the board.

(b) An application for a license must include the following:

(1) The identification of the applicant's principal owners who own five percent (5%) or more of the company, partners, members of its board of directors, and officers;

(2) A national criminal background check for each person identified under subdivision (b)(1) conducted by the Tennessee bureau of investigation or another appropriate law enforcement agency. A set of fingerprints must be supplied upon request and in the manner requested by the investigating agency;

(3) Information, documentation, and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty, and integrity. Such information may include, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest records, business activities, financial affairs, and business, professional, and personal associates, covering at least the ten-year period immediately preceding the filing of the application;

(4) Notice and a description of civil judgments obtained against the applicant pertaining to antitrust or security regulation laws of the federal government, of this state or of any other state, jurisdiction, province, or country;

(5) Letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business. The letters of reference must indicate that such law enforcement agencies do not

have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, must specify what the information is;

(6) If the applicant has conducted gaming operations in a jurisdiction which permits such activity, letters of reference from the regulatory body that regulates sports wagering that specify the standing of the applicant with the regulatory body; provided, however, that if no such letters are received within sixty (60) days of the request therefor, the applicant may submit a statement under oath that the applicant is or was, during the period such activities were conducted, in good standing with the governing body;

(7) Information, documentation, and assurances concerning financial background and resources as may be required to establish by clear and convincing evidence the financial stability, integrity, and responsibility of the applicant, including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. Each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the board. The board may consider any relevant evidence of financial stability. The applicant is presumed to be financially stable if the applicant establishes by clear and convincing evidence that it meets each of the following standards:

(A) The ability to assure the financial integrity of sports wagering operations by the maintenance of a bankroll or equivalent provisions adequate to pay winning wagers to bettors when due. An applicant is presumed to have met this standard if the applicant maintains, on a daily basis, a bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year;

(B) The ability to meet ongoing operating expenses which are essential to the maintenance of continuous and stable sports wagering operations; and

(C) The ability to pay, as and when due, all state and federal taxes;

(8) Information, documentation, and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and gaming experience as to establish the likelihood of the creation and maintenance of a successful, efficient sports wagering operation;

(9) Information, as required by rule of the board, regarding the financial standing of the applicant, including, without limitation, each person or entity that has provided loans or financing to the applicant;

(10) A nonrefundable application fee in the amount of fifty thousand dollars ($50,000), and an annual licensing fee in the amount of seven hundred fifty thousand dollars ($750,000); and

(11) Any additional information required by the board by rule.

(c) Upon review of the application, the board shall approve or deny an

application for a license not more than ninety (90) days after receipt of an application.

(d) A license issued by the board authorizes the licensee to offer interactive sports wagering in this state.

(e) A licensee may renew its license by submitting an application on a form, in such manner, and in accordance with such requirements as may be prescribed by rule of the board. A licensee shall submit the nonrefundable annual license and application fees prescribed under subdivision (b)(10) with its application for the renewal of its license.

(f) For each application for licensure or renewal of a license that is approved under this section, the amount of the application fee must be credited toward the licensee's annual license fee and the licensee shall remit the balance of the annual fee to the corporation upon approval of a license. The fees collected from licensees under this section must be used by the corporation to pay the actual operating and administrative expenses incurred under this part.

(g) Except as provided in subsection (f), licensing and application fees collected by the board must be distributed to the state treasurer for deposit into the Tennessee Promise scholarship endowment fund created under § 49-4-708(d).

(h) Each person holding a license under this part has a continuing duty to immediately inform the board of any change in status relating to any information that may disqualify the person from holding the license.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-117 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating

rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-318. Restrictions on licensees. [Effective until January 1, 2022; See Compiler's Notes.]

(a) A licensee shall not:

(1) Allow a minor to place a wager;

(2) Offer, accept, or extend credit to a bettor;

(3) Directly advertise or promote sports wagering to minors. The board shall adopt rules specific to the manner in which a licensee may advertise its business operations as authorized by this part;

(4) Offer or accept a wager on any event, outcome, or occurrence other than a sporting event, including, without limitation, a high school sporting event offered, sponsored, or played in connection with a public or private institution that offers education at the secondary level; or

(5) Accept a wager from a person who is on the registry created and maintained by the corporation under § 4-51-312(c).

(b) A violation of this section is:

(1) For a first offense, a Class B misdemeanor; and

(2) For a second or subsequent offense, a Class A misdemeanor.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-118 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.
Penalties for Class A and B misdemeanors, § 40-35-111.

4-51-319. Responsible sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]

(a) Licensees shall allow bettors to restrict themselves from placing wagers with the licensee, including limits on the time spent betting and amounts wagered, and take reasonable steps to prevent those bettors from placing such wagers. At the request of a bettor, a licensee may share the request with the board for the sole purpose of disseminating the request to other licensees.

(b) The board shall promulgate rules that require a licensee to implement responsible sports wagering programs that include comprehensive training on responding to circumstances in which individuals present signs of a gambling addiction.

(c)(1) The department of mental health and substance abuse services shall use the funds distributed to the department under § 4-51-304(e)(3) to oversee one (1) or more grant programs with organizations to provide treatment services for individuals with problem gambling or a gambling disorder, and to establish prevention initiatives to reduce the number of individuals with problem gambling or a gambling disorder. The department may also use the funds distributed to the department to cover its actual administrative costs and the costs of professional services associated with overseeing each grant program.

(2) The department shall annually generate a report outlining the activities of the department with respect to funding received under this part for problem gambling and gambling disorders, including, but not limited to, descriptions of programs, therapies, grants, and other resources made available, the success and outcomes of utilizing such programs, therapies, grant programs, and resources, the number of persons treated, the number of persons who complete programs and therapies, and the rate of recidivism, if known. The department shall file the annual report with the governor, the speaker of the senate, and the speaker of the house of representatives, and shall publish the report on its website, no later than January 1 of each year. The annual report must include an itemization of the department's expenditures relating to administrative costs and professional services associated with its activities under this subsection (c).

History.
Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.
This section was transferred to § 4-49-119 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee edu-

cation lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-320. Persons prohibited from obtaining licenses. [Effective until January 1, 2022; See Compiler's Notes.]

The following persons shall not apply for or obtain a license:

(1) A member or employee of the council, board, or corporation;

(2) An employee of any professional sports team;

(3) A coach of, or player for, a collegiate, professional, or Olympic sports team or sport;

(4) A person who is a member or employee of any governing body of a sports team, league, or association;

(5) A person who has been convicted of a crime as specified in rules promulgated by the board;

(6) A person having the ability to directly affect the outcome of a sporting event; and

(7) Any other category of persons, established by rule of the board, that if licensed, would affect the integrity of sports wagering in this state.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-120 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-321. Transfer of licenses. [Effective until January 1, 2022; See Compiler's Notes.]

The board may adopt rules prescribing the manner in which a license may be transferred and a fee for the transfer of the license.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-121 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-322. House rules — Acceptance of wagers — Payouts. [Effective until January 1, 2022; See Compiler's Notes.]

(a) Each licensee shall adopt and adhere to a written, comprehensive policy outlining the house rules governing the acceptance of wagers and payouts. The policy and rules must be approved by the board prior to the acceptance of a wager by a licensee. The policy and rules must be readily available to a bettor on the licensee's website.

(b) The board shall promulgate rules regarding:

(1) The manner in which a licensee accepts wagers from and issues payouts to bettors, including payouts in excess of ten thousand dollars ($10,000); and

(2) Reporting requirements for suspicious wagers.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-122 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-323. Inspections. [Effective until January 1, 2022; See Compiler's Notes.]

Members of the board or designated employees or agents of the corporation may, during normal business hours, enter the premises of any facility of a licensee or third party utilized by the licensee to operate and conduct business in accordance with this part for the purpose of inspecting books and records

kept as required by this part, to ensure that the licensee is in compliance with this part, or to make any other inspection of the premises necessary to protect the interests of this state and its consumers.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-123 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-324. Licensee reporting requirements — Compliance hearing. [Effective until January 1, 2022; See Compiler's Notes.]

(a) Each licensee shall report to the board, no later than January 15 of each year:

(1) The total amount of wagers received from bettors for the immediately preceding calendar year;

(2) The adjusted gross income of the licensee for the immediately preceding calendar year; and

(3) Any additional information required by rule of the board deemed in the public interest or necessary to maintain the integrity of sports wagering in this state.

(b) A licensee shall immediately report to the board any information relating to:

(1) The name of any newly elected officer or director of the board of the licensed entity; and

(2) The acquisition by any person of five percent (5%) or more of any class of corporate stock.

(c) With respect to information reported under subsection (b), a licensee shall include with the report a statement as to any conflict of interest that may exist as the result of such election or acquisition.

(d) Upon receiving a report under this section or § 4-51-315(b), the board may conduct a hearing in accordance with § 4-51-326 to determine whether the licensee remains in compliance with this part.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-124 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-325. Interactive sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]

(a) Prior to placing a wager with a licensee via interactive sports wagering, a bettor shall register with the licensee remotely and attest that the bettor meets the requirements to place a wager with a licensee in this state. Prior to verification of a bettor's identity in accordance with this section, a licensee shall not allow the bettor to engage in sports wagering, make a deposit, or process a withdrawal via interactive sports wagering. A licensee shall implement commercially and technologically reasonable procedures to prevent access to sports wagering by minors on its interactive platforms. A licensee may use information obtained from third parties to verify that a person is

authorized to open an account, place wagers, and make deposits and withdrawals.

(b) A licensee shall adopt a registration policy to ensure that all bettors utilizing interactive sports wagering are authorized to place a wager with a licensee within this state. The policy must include, without limitation, a mechanism by which to:

(1) Verify the name and age of the registrant;

(2) Verify that the registrant is not prohibited from placing a wager under § 4-51-312; and

(3) Obtain the following information:

(A) A physical address other than a post office box;

(B) A phone number;

(C) A unique user name; and

(D) An active email account.

(c) A licensee may require a bettor to provide the licensee with a signed and notarized document attesting that the bettor is qualified to engage in sports wagering under this part as part of the registration policy of the licensee.

(d) A bettor shall not register more than one (1) account with a licensee, and a licensee shall use all commercially and technologically reasonable means to ensure that each bettor is limited to one (1) account.

(e) A licensee, in addition to complying with state and federal law pertaining to the protection of the private, personal information of registered bettors, shall use all other commercially and technologically reasonable means to protect such information consistent with industry standards.

(f) Once a bettor account is created, a bettor may only fund the account through:

(1) Electronic bank transfer of funds, including such transfers through third parties;

(2) Debit cards;

(3) Online and mobile payment systems that support online money transfers; and

(4) Any other method approved by the rule of the board that is initiated with cash.

(g)(1) Each financial transaction with respect to an account between a bettor and licensee must be confirmed by email, telephone, text message, or other means agreed upon by the account holder. A licensee shall use all commercially and technologically reasonable means to independently verify the identity of the bettor making a deposit or withdrawal.

(2) If a licensee determines that the information provided by a bettor to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates the policies and procedures of the licensee, the licensee shall, within ten (10) days, require the submission of additional information that can be used to verify the identity of the bettor.

(3) If such information is not provided or does not result in verification of the bettor's identity, the licensee shall:

(A) Immediately suspend the bettor's account and not allow the bettor to place wagers;

(B) Retain any winnings attributable to the bettor;

(C) Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and

(D) Deactivate the account.

(h) A licensee shall utilize geo-location or geo-fencing technology to ensure that interactive sports wagering is only available to bettors who are physically located in this state. A licensee shall maintain in this state its servers used to transmit information for purposes of accepting or paying out bets or wagers on a sporting event placed by bettors located in this state.

(i) A licensee shall clearly and conspicuously display on the website page a statement indicating that it is illegal for a person under twenty-one (21) years of age to engage in sports wagering in this state.

(j) The board shall promulgate rules for purposes of regulating sports wagering via interactive sports wagering.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-125 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-326. Violations of part — Hearings — Administrative fines. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The board may investigate and conduct a hearing with respect to a licensee upon information and belief that the licensee has violated this part, or upon the receipt of a credible complaint from any person that a licensee has

violated this part. The board shall conduct investigations and hearings in accordance with rules adopted by the board.

(b) If the board determines that a licensee has violated any provision of this part or rule of the board, the board may:

(1) Suspend, revoke, or refuse to renew a license; and

(2) For any violation by a licensee, impose an administrative fine not to exceed twenty-five thousand dollars ($25,000) per violation.

(c) Except as provided in § 4-51-327, the board shall promulgate rules establishing a schedule of administrative fines that may be assessed in accordance with subsection (b) for each violation of this part.

(d) Fines assessed under this section must be accounted for separately for use by the board in a manner consistent with rules of the board.

(e) The board may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records, and documents for purposes of carrying out its duties under this part.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-126 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-327. Investigations by board. [Effective until January 1, 2022; See Compiler's Notes.]

(a) The board, utilizing security personnel of the corporation, shall conduct investigations to determine whether:

(1) A licensee is accepting wagers from minors or other persons ineligible to place wagers in this state; and

(2) A person is unlawfully accepting wagers from another person without a license or at a location in violation of this part.

(b) After a hearing under § 4-51-326, if the board finds that:

(1) A licensee is accepting wagers from minors or other persons ineligible to place wagers in this state, the board shall impose a fine against the licensee in the following amount:

(A) For a first offense, one thousand dollars ($1,000);

(B) For a second offense, two thousand dollars ($2,000); and

(C) For a third or subsequent offense, five thousand dollars ($5,000); and

(2) A person is unlawfully accepting wagers from another person without a license, the board shall impose a fine against the person in the following amount:

(A) For a first offense, ten thousand dollars ($10,000);

(B) For a second offense, fifteen thousand dollars ($15,000); and

(C) For a third or subsequent offense, twenty-five thousand dollars ($25,000).

(c) This section does not prohibit the board from suspending, revoking, or refusing to renew the license of a licensee in accordance with § 4-51-326.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-127 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative du-

ties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-328. Appealing final actions of the board. [Effective until January 1, 2022; See Compiler's Notes.]

(a) A licensee or other person aggrieved by a final action of the board may appeal that decision to the chancery court of Davidson County.

(b) The chancery court of Davidson County shall hear appeals from decisions of the board and, based upon the record of the proceedings before the board, may reverse the decision of the board only if the appellant proves the decision to be:

(1) Clearly erroneous;

(2) Arbitrary and capricious;

(3) Procured by fraud;

(4) A result of substantial misconduct by the board; or

(5) Contrary to the United States Constitution, the Constitution of Tennessee, or this part.

(c) The chancery court may remand an appeal to the board to conduct further hearings.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-128 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-329. Civil penalties. [Effective until January 1, 2022; See Compiler's Notes.]

(a) A licensee or other person who violates this part is liable for a civil penalty of not more than five thousand dollars ($5,000) per violation, not to exceed fifty thousand dollars ($50,000) for violations arising out of the same transaction or occurrence, which must accrue to the corporation and may be recovered in a civil action brought by the office of the attorney general and reporter or its designee in the name of the corporation.

(b) The office of the attorney general may seek and obtain an injunction in a court of competent jurisdiction for purposes of enforcing this part.

(c) Costs must not be taxed against the office of the attorney general and reporter or this state for actions brought under this section.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-129 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

4-51-330. Transmission of sports information for purposes of sports wagering. [Effective until January 1, 2022; See Compiler's Notes.]

(a) It is unlawful for any person or entity, directly or indirectly, to knowingly receive, supply, broadcast, display, or otherwise transmit material nonpublic

information for the purpose of wagering on a sporting event or influencing another person's or entity's wager on a sporting event.

(b) This section does not apply to the dissemination of public information as news, entertainment, or advertising.

(c) A violation of this section is a Class A misdemeanor.

(d) As used in this section, "material nonpublic information" means information that has not been disseminated publicly concerning an athlete, contestant, prospective contestant, or athletic team, including, without limitation, confidential information related to medical conditions or treatment, physical or mental health or conditioning, physical therapy or recovery, discipline, sanctions, academic status, education records, eligibility, playbooks, signals, schemes, techniques, game plans, practices, strategies, assessments, systems, drills, or recordings of practices or other athletic activities.

History.

Acts 2019, ch. 507, § 1; 2021, ch. 593, § 30.

Compiler's Notes.

This section was transferred to § 4-49-130 by Acts 2021, ch. 593, § 30, effective January 1, 2022.

Acts 2021, ch. 593, § 31 provided that the appointed members of the Tennessee education lottery corporation sports wagering advisory council, as it existed prior to January 1, 2022, are transferred to the sports wagering advisory council as created by this act, to serve as the initial appointed members of the sports wagering advisory council, and shall serve out their respective terms on such council until that time at which such terms would have expired while members of the Tennessee education lottery corporation sports wagering advisory council.

Acts 2021, ch. 593, § 32 provided that:

"(a) The Tennessee education lottery corporation and its board of directors shall assist and facilitate the transfer of its duties and powers to the sports wagering advisory council beginning January 1, 2022. Until emergency or permanent rules are adopted under § 4-49-106 [former § 4-51-306], existing bylaws governing sports gaming adopted by the Tennessee education lottery corporation remain in full force and effect.

"(b) A license or permit issued by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior January 1, 2022, remains valid on and after January 1, 2022, and is deemed to be a license or permit issued by the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306].

"(c) Upon the promulgation of emergency or permanent rules by the sports wagering advisory council under § 4-49-106 [former § 4-51-306], the Tennessee education lottery corporation shall transfer all remaining funds collected for the administration of Tennessee Code Annotated, Title 4, Chapter 51, Part 3, to the sports wagering advisory council for the administration of the Tennessee Sports Gaming Act on and after January 1, 2022.

"(d) Contracts executed by the Tennessee education lottery corporation under Tennessee Code Annotated, Title 4, Chapter 51, Part 3, prior to January 1, 2022, including, but not limited to, for purposes of regulating sports gaming and providing related services, remain valid on and after January 1, 2022, and are assigned to the sports wagering advisory council upon the promulgation of emergency or permanent rules by such council under § 4-49-106 [former § 4-51-306]. Such contracts remain in full force and effect until such time as the contracts expire by their original terms, at which time the contracts may be renewed with the sports wagering advisory council at the discretion of the parties."

Effective Dates.

Acts 2021, ch. 593, § 33. January 1, 2022; provided however for purposes of promulgating rules and carrying out any administrative duties necessary to effectuate the provisions and intent of the act took effect May 27, 2021.

Cross-References.

Confidentiality of public records, § 10-7-504.

Penalty for Class A misdemeanor, § 40-35-111.

CHAPTER 52

GOVERNOR'S BOOKS FROM BIRTH FUND

Section
4-52-101. Establishment.
4-52-102. Purpose.
4-52-103. Staff, office space and supplies — Travel expenses — Administrative attachment.
4-52-104. Contracts and agreements.
4-52-105. Partnership with nonprofit public benefit corporation.
4-52-106. Authorization to work with local government, private organizations and citizens.
4-52-107. Participation by nonprofit partner in retirement system.
4-52-108. Participation by nonprofit partner in health insurance plan.
4-52-109. Annual report.
4-52-110. Audit.
4-52-111. Intentional destruction of books for Imagination Library Program prohibited — Delivery to intended recipients.

4-52-101. Establishment.

There is established the "Governor's Books from Birth Fund."

History.
Acts 2005, ch. 416, § 1.

4-52-102. Purpose.

The fund shall promote and foster the development of a comprehensive statewide program for encouraging preschool children to read.

History.
Acts 2005, ch. 416, § 1.

4-52-103. Staff, office space and supplies — Travel expenses — Administrative attachment.

(a) Any agency of state government may provide staff and other assistance to the fund, subject to existing statutes, rules, and policies.

(b) Subject to existing statutes, rules, and policies, the fund may procure office space and supplies necessary to enable the fund to effectively carry out the program.

(c) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations, as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) For administrative purposes, the fund shall be attached to the department of education.

History.
Acts 2005, ch. 416, § 1.

4-52-104. Contracts and agreements.

The fund may enter into such contractual and promotional agreements necessary to effectively stimulate a statewide program for encouraging preschool children to read.

History.
Acts 2005, ch. 416, § 1.

4-52-105. Partnership with nonprofit public benefit corporation.

(a) The fund is authorized to partner with a nonprofit public benefit corporation that is organized solely to promote and encourage reading by the children of the state of Tennessee, for the purpose of implementing the early reading initiatives of the fund.

(b) The nonprofit partner shall have its board of directors elected by a process approved annually by the governor or the governor's designee. The nonprofit partner's board may select its own chairperson.

(c) The nonprofit partner shall be properly incorporated under the laws of the state of Tennessee, and approved by the internal revenue service as an organization that is exempt from federal income tax under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), by virtue of being an organization described in § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

(d) The nonprofit partner may receive funds from the general public, and also may receive funds from the state of Tennessee, at such times and in such amounts as appropriated by the general assembly.

(e) Costs to underwrite the nonprofit partner's activities related to the fund shall be borne from revenues of the nonprofit partner and no state employee shall benefit from such proceeds.

(f) The nonprofit partner may exercise all powers authorized under the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68.

(g) The nonprofit partner may receive staff and other assistance from any agency of state government, subject to existing statutes, rules, and policies.

(h) All funds that are held by the fund on June 30, 2005, shall be transferred to the nonprofit partner for the purposes described in this chapter.

History.
Acts 2005, ch. 416, § 1.

4-52-106. Authorization to work with local government, private organizations and citizens.

The governor's books from birth fund and the nonprofit partner may work with local governments, private organizations and citizens as it plans and engages in activities related to the fund.

History.
Acts 2005, ch. 416, § 1.

4-52-107. Participation by nonprofit partner in retirement system.

(a) The nonprofit partner shall be eligible to be a participating employer in the Tennessee consolidated retirement system upon passage of a resolution by the nonprofit's board of directors authorizing:

(1) An actuarial study; and

(2) Participation, and accepting the liability as a result of the participation, by its full-time employees.

(b) The employees of the nonprofit partner shall make the same contribu-

tions, participate in the same manner, and shall be eligible for the same benefits as employees of local governments participating in the retirement system under this chapter.

(c) The employees of the nonprofit partner shall be entitled to credit for prior service, as approved by the board of directors of the nonprofit, under the same provisions that apply to employees of local governments.

(d) The retirement system shall not be liable for the payment of retirement allowances or other payments on account of employees of the nonprofit partner, or the beneficiaries of such employees, for which reserves have not been previously created from funds contributed by the nonprofit partner, its employees or the nonprofit partner and its employees.

(e) In case of the withdrawal of the nonprofit partner as a participating employer, the benefits of the members and beneficiaries shall be determined in accordance with § 8-35-211.

(f) It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the nonprofit partner.

History.
Acts 2005, ch. 416, § 1.

4-52-108. Participation by nonprofit partner in health insurance plan.

The nonprofit partner may participate, the same as an eligible quasi-governmental organization, in the health insurance plan authorized under § 8-27-207 [repealed and reenacted. See Compiler's Notes], to provide health insurance for its employees, as long as such nonprofit partner satisfies each of the requirements of § 8-27-207 [repealed and reenacted. See Compiler's Notes]. For the purpose of determining the distribution of premium for participating in the specific policies authorized by the state insurance committee, the nonprofit partner shall pay the same amount as the state government for employee participation in such coverage. An employee of the nonprofit partner electing to continue such coverage shall continue to meet the eligibility criteria of a state employee to participate in the state plan. Each employee of the nonprofit partner also is subject to the same retiree continuation provisions as state employees, as provided in title 8, chapter 27, part 2 [repealed and reenacted. See Compiler's Notes].

History.
Acts 2005, ch. 416, § 1.

Compiler's Notes.
Acts 2005, ch. 416, § 1 provided that, if, within sixty (60) days of June 17, 2005, a state employee becomes an employee of the nonprofit partner, such employee is eligible to continue to participate in the insurance plans authorized in § 8-27-201 [now § 8-27-202].

Section 8-27-207 referred to in this section was repealed and reenacted by Acts 2015, ch. 426, effective May 18, 2015. For current comparable provisions, see now § 8-27-702.

Title 8, chapter 27, part 2 referred to in this section was repealed and reenacted by Acts 2015, ch. 426, effective May 18, 2015. For current comparable provisions, see title 8, chapter 27, part 7.

4-52-109. Annual report.

The nonprofit partner shall annually submit to the governor and the speakers of the senate and the house of representatives, within ninety (90)

days after the end of its fiscal year, a complete and detailed report setting forth its operation and accomplishments.

History.
Acts 2005, ch. 416, § 1.

4-52-110. Audit.

The nonprofit partner shall be subject to examination and audit by the comptroller of the treasury in the same manner as prescribed for departments and agencies of the state.

History.
Acts 2005, ch. 416, § 1.

4-52-111. Intentional destruction of books for Imagination Library Program prohibited — Delivery to intended recipients.

(a) No person shall intentionally destroy books intended to be delivered to children enrolled in Tennessee's Imagination Library program.

(b) Any person in possession of undelivered or undeliverable Imagination Library program books shall make every effort to deliver the books to their intended recipients or, in the alternative, make the books available to any pre-kindergarten, kindergarten or elementary education program.

History.
Acts 2014, ch. 681, § 1.

CHAPTER 53

[RESERVED]

CHAPTER 54

TENNESSEE FIREARMS FREEDOM ACT

Section
4-54-101. Short title.
4-54-102. Constitutional authority.
4-54-103. Chapter definitions.
4-54-104. Firearms, firearm accessories and ammunition manufactured in this state not subject to federal regulation under interstate commerce clause.
4-54-105. Application of § 4-54-104.
4-54-106. Firearm must be clearly stamped with words "Made in Tennessee".

4-54-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Firearms Freedom Act."

History.
Acts 2009, ch. 435, § 2.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

4-54-102. Constitutional authority.

The general assembly declares that the authority for this chapter is the following:

(1) The tenth amendment to the United States constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of this state certain powers as they were understood at the time that this state was admitted to statehood. The guarantee of those powers is a matter of contract between the state and people of this state and the United States as of the time that the compact with the United States was agreed upon and adopted by this state and the United States;

(2) The ninth amendment to the United States constitution guarantees to the people rights not granted in the constitution and reserves to the people of this state certain rights as they were understood at the time that this state was admitted to statehood. The guarantee of those rights is a matter of contract between the state and people of this state and the United States as of the time that the compact with the United States was agreed upon and adopted by this state and the United States;

(3) The regulation of intrastate commerce is vested in the states under the ninth and tenth amendments to the United States constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories and ammunition;

(4) The second amendment to the United States constitution reserves to the people the right to keep and bear arms as that right was understood at the time that this state was admitted to statehood, and the guarantee of the right is a matter of contract between the state and people of this state and the United States as of the time that the compact with the United States was agreed upon and adopted by this state and the United States; and

(5) The Tennessee constitution clearly secures to Tennessee citizens, and prohibits government interference with, the right of individual Tennessee citizens to keep and bear arms.

History.
Acts 2009, ch. 435, § 3.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

4-54-103. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including, but not limited to, telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speed-

loaders, ammunition carriers and lights for target illumination;

(2) "Generic and insignificant parts" includes, but is not limited to, springs, screws, nuts and pins; and

(3) "Manufactured" means creating a firearm, a firearm accessory or ammunition from basic materials for functional usefulness, including, but not limited to, forging, casting, machining or other processes for working materials.

History.
Acts 2009, ch. 435, § 4.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

4-54-104. Firearms, firearm accessories and ammunition manufactured in this state not subject to federal regulation under interstate commerce clause.

A personal firearm, a firearm accessory or ammunition that is manufactured commercially or privately in this state and that remains within the borders of this state is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured in this state from basic materials and that can be manufactured without the inclusion of any significant parts imported into this state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories or ammunition, and their importation into this state and incorporation into a firearm, a firearm accessory or ammunition manufactured in this state does not subject the firearm, firearm accessory or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories and ammunition under interstate commerce as if they were actually firearms, firearms accessories or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories and ammunition made in this state from those materials. Firearms accessories that are imported into this state from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in this state.

History.
Acts 2009, ch. 435, § 5.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

4-54-105. Application of § 4-54-104.

Section 4-54-104 shall not apply to:

(1) A firearm that cannot be carried and used by one (1) person;

(2) A firearm that has a bore diameter greater than one and one-half inches (1 ½″) and that uses smokeless powder, not black powder, as a propellant;

(3) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(4) A firearm that discharges two (2) or more projectiles with one (1) activation of the trigger or other firing device.

History.
Acts 2009, ch. 435, § 6.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

4-54-106. Firearm must be clearly stamped with words "Made in Tennessee".

A firearm manufactured or sold in this state under this chapter must have the words "Made in Tennessee" clearly stamped on a central metallic part, such as the receiver or frame.

History.
Acts 2009, ch. 435, § 7.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add a new chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added the new chapter as chapter 55, §§ 4-55-101 — 4-55-105.

CHAPTER 55

BUREAU OF ETHICS AND CAMPAIGN FINANCE

Section

4-55-101. Creation — Composition — Governance — Attachment to department of state — Meetings.
4-55-102. Employees of the bureau.
4-55-103. Duties of the bureau.
4-55-104. Disposition of all fees, appropriations and penalties.
4-55-105. Regulatory jurisdiction of members of the registry of election finance and of members of the ethics commission.
4-55-106. Legislative intent.

4-55-101. Creation — Composition — Governance — Attachment to department of state — Meetings.

(a)(1) There is created, as an independent entity of state government, the bureau of ethics and campaign finance, referred to in this chapter as the "bureau."

(2) The bureau shall be composed of two (2) divisions as follows:

(A) The Tennessee registry of election finance, established by title 2, chapter 10, part 2; and

(B) The Tennessee ethics commission, established by title 3, chapter 6, part 1.

(3) The bureau shall be governed by a board of directors to be composed of the six (6) members of the registry of election finance and the six (6) members of the ethics commission.

(b) The bureau of ethics and campaign finance shall be attached to the department of state for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The autonomy of the bureau and its authority is absolute and the secretary of state shall have no administrative or supervisory control over the bureau.

(c) The board of directors shall elect a chair from among its membership. The chair shall serve in that capacity for one (1) year and shall be eligible for reelection. The chair shall preside at all meetings and shall have all the powers and privileges of the other members.

(d) Eight (8) members of the board of directors shall constitute a quorum and eight (8) affirmative votes are required for any action by the board of directors. Special meetings shall be called by the chair on the chair's initiative or upon the written request of eight (8) members. Members shall receive written notice three (3) days in advance of a special meeting. Notice shall be served personally or left at a member's usual place of residence and shall specify the purpose, time and place of the meeting. No matters unrelated to the specified purpose may be considered without a specific waiver by all members of the board of directors.

History.
Acts 2009, ch. 556, § 1.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-106. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

Compiler's Notes.
The bureau of ethics and campaign finance, created by this section, terminates June 30, 2027. See §§ 4-29-112, 4-29-248.

4-55-102. Employees of the bureau.

(a) The board of directors of the bureau of ethics and campaign finance shall appoint a full-time executive director who shall serve at the pleasure of the board of directors. Other employees of the bureau shall be employed on recommendation of the executive director with the approval of the board. The executive director and all other employees of the bureau shall constitute the staff of the bureau and its two (2) divisions. The board of directors of the bureau may call on the office of the state coordinator of elections for such advice, documents or services as it may require.

(b) Employees of the bureau shall not possess state service status, but the employees shall be subject to personnel policies applicable to state employees generally, such as leave, compensation, classification and travel requests.

(c) Neither the executive director nor any other employee of the bureau, nor any member of an employee's immediate family as defined in § 3-6-301, shall, during the period of such employment:

(1) Be allowed to hold or qualify for elective office to any state or local public office as defined in § 2-10-102;

(2) Be an officer of any political party or political committee;

(3) Permit the employee's name to be used or make contributions in support of or in opposition to any candidate or proposition, except that an employee's immediate family may make campaign contributions in support of or in opposition to any candidate or proposition;

(4) Participate in any way in any election campaign;

(5) Lobby or employ a lobbyist; provided, that this subdivision (c)(5) shall not prohibit the executive director from the performance of the executive director's duties; or

(6) Be employed by any elected officeholder, either in an official capacity or as an individual, or be employed by any business in which an elected officeholder has any direct input concerning employment decisions.

History.
Acts 2009, ch. 556, § 1; 2012, ch. 800, § 49.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

Compiler's Notes.
Acts 2012, ch. 800, § 1 provided that the act, which amended subsection (b), shall be known and cited as the "Tennessee Excellence, Accountability, and Management (T.E.A.M.) Act of 2012."

4-55-103. Duties of the bureau.

The bureau of ethics and campaign finance shall:

(1) Promulgate such rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, as are necessary to implement title 2, chapter 10; title 3, chapter 6; title 8, chapter 17; and title 8, chapter 50, part 5; provided, however, that all rules that relate exclusively to the registry of election finance shall be initiated and proposed to the board of directors of the bureau by a majority of the members of the registry of election finance and all rules that relate exclusively to the ethics commission shall be initiated and proposed to the board of directors of the bureau by a majority of the members of the ethics commission. Subject to the limitations contained in this subdivision (1), all rulemaking authority delegated by this chapter shall be vested in the bureau of ethics and campaign finance;

(2) Collect or receive all filings required to be made pursuant to title 2, chapter 10; title 3, chapter 6; title 8, chapter 17; or title 8, chapter 50, part 5, and assign the issues contained in title 2, chapter 10; title 3, chapter 6; title 8, chapter 17; or title 8, chapter 50, part 5, as appropriate, to the registry of election finance or the ethics commission, and further collect all fees, fines and moneys assessed by the registry of election finance or the ethics commission; and

(3) Promulgate rules prescribing all forms for filings, complaints, registrations, statements and other documents that are required to be filed under the laws administered and enforced by the ethics commission or the registry of election finance, with the objective of making the documents as simple and understandable as possible for both the person filing the document and the average citizen of this state.

History.
Acts 2009, ch. 556, § 1.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

4-55-104. Disposition of all fees, appropriations and penalties.

All fees imposed by the registry of election finance and the ethics commission and collected by the bureau of ethics and campaign finance, as well as all appropriations made to the bureau, shall be deposited by the state treasurer in a separate account exclusively for the bureau, and shall be used by the bureau to defray expenses necessary to administer this part; title 2, chapter 10; title 3, chapter 6; title 8, chapter 17; and title 8, chapter 50, part 5, including the payment of salaries to employees, the purchase of supplies and any other necessary expenses. Unexpended and unobligated fees remaining in this account at the end of any fiscal year shall not revert to the general fund, but shall remain available for use by the bureau. Penalties collected by the bureau shall be deposited into the state general fund.

History.
Acts 2009, ch. 556, § 1.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

4-55-105. Regulatory jurisdiction of members of the registry of election finance and of members of the ethics commission.

(a) Except as provided in this chapter specifically to the contrary, the members of the registry of election finance shall exercise regulatory jurisdiction over matters relating exclusively to the registry pursuant to title 2, chapter 10, free from interference by members of the ethics commission.

(b) Except as provided in this chapter specifically to the contrary, the members of the ethics commission shall exercise regulatory jurisdiction over matters relating exclusively to the ethics commission pursuant to title 2, chapter 10, part 1; title 3, chapter 6; title 8, chapter 17; and title 8, chapter 50, part 5, free from interference by members of the registry of election finance.

History.
Acts 2009, ch. 556, § 1.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

4-55-106. Legislative intent.

It is the intent of the general assembly that:

(1) The current members of the registry of election finance and the ethics commission shall remain members of each respective entity and shall comprise the bureau of ethics and campaign finance created by this chapter until the expiration of their terms or resignation;

(2) The executive director of the registry of election finance, on June 30, 2009, shall be the initial executive director of the bureau of ethics and campaign finance;

(3)(A) From July 1, 2009, through and including August 10, 2009, the bureau of ethics and campaign finance is authorized to undertake actions necessary on behalf of the Tennessee ethics commission and the Tennessee registry of election finance to effectuate the transition of such entities into divisions of the bureau;

(B) Staff positions of the Tennessee ethics commission as of June 30, 2009, shall be transferred to the bureau of ethics and campaign finance through and including August 10, 2009; provided, however, that the bureau of ethics and campaign finance shall reclassify the position of the executive director of the Tennessee ethics commission. With the approval of the bureau, the executive director of the bureau may reclassify or eliminate staff positions of the ethics commission after August 10, 2009, as the executive director deems necessary for the efficient and effective operations of the bureau. No vacant staff position within the bureau shall be filled from July 1, 2009, through August 10, 2009;

(4) All rules of the registry of election finance and the ethics commission in effect on June 30, 2009, shall remain in full force and effect as rules of the bureau of ethics and campaign finance until modified or repealed; and

(5) The registry of election finance and ethics commission shall be audited in conjunction with the audit of the bureau of ethics and campaign finance by the comptroller of the treasury for purposes of title 4, chapter 29.

History.
Acts 2009, ch. 556, § 29.

Code Commission Notes. Acts 2009, ch. 556, § 1 purported to add this chapter as chapter 54, §§ 4-54-101 — 4-54-105. Acts 2009, ch. 435, §§ 2-7 added a new chapter 54, §§ 4-54-101 — 4-54-106; therefore, the code commission added this chapter as chapter 55, §§ 4-55-101 — 4-55-106.

CHAPTER 56
PROCUREMENT

Section
4-56-101. Chapter definitions.
4-56-102. Procurement commission — Creation.
4-56-103. Proposed rules related to procurement — State protest committee — Creation — Commission's authority — Appeals.
4-56-104. Procurement office — Creation — Chief procurement officer — Personnel — Contracts and contract rights and responsibilities — Adoption of operational procedures.
4-56-105. Powers and duties of chief procurement officer.
4-56-106. Advisory council on state procurement — Creation.
4-56-107. Requests for noncompetitive contracts to fiscal review committee — Review by the fiscal review committee — Exceptions to requests — Reports.
4-56-108. Review and approval by the comptroller of the treasury — Examination of documents— Documentation of the cancellation of procurements or rejection of all responses to a procurement — Protests — Executed documents — Posting of reports.
4-56-109. Vendor indictment of Antitrust Act — Notice — Fine — Contract termination.

4-56-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the state procurement commission, which replaces the board of standards within former title 12, chapter 3, part 4;

(2) "Committee" means the state protest committee, which replaces the board of standards protest authority within former § 12-3-214 [repealed] and the review committee within former § 12-4-109(a)(1)(E) [repealed];

(3) "Council" means the advisory council on state procurement;

(4) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. "Goods" does not include leases, acquisitions, and disposals of real property, which are governed under chapter 15 of this title;

(5) "Grant" means any grant awarded to the state or awarded by the state for the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law. "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration;

(7) "Proposer" includes a "bidder" or "proposer" that is a legal entity that has properly registered as required by the state. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer";

(8) "Services" means all services and agreements obligating the state, except services for highway and road improvements, which are governed by title 54, and designer and construction services, which are governed under chapter 15 of this title; and

(9) "Vendor" means a legal entity that has been established by the department of finance and administration's division of accounts as a vendor through proper authority for which payment may be made by the state.

History.

Acts 2011, ch. 295, § 1.

Compiler's Notes.

Former §§ 12-3-214 and 12-4-109(a)(1)(E), referred to in this section, were repealed by Acts 2011, ch. 295, §§ 10 and 13, respectively, effective April 1, 2012.

Acts 2010, 1098, § 1, purported to enact this section effective October 1, 2011. Acts 2011, ch. 295, § 1 deleted the section effective May 27, 2011, and enacted this section instead, effective April 1, 2012.

Attorney General Opinions.

Comptroller's service on proposed state procurement commission. OAG 10-63, 2010 Tenn. AG LEXIS 68 (5/5/10).

Applicability of procurement requirements when providing grants and entering into agreements to assist impaired professionals pursuant to T.C.A. § 63-1-136; applicability to grant contracts for peer assistance issued by health-related regulatory boards under T.C.A. § 63-1-136. OAG 14-98, 2014 Tenn. AG LEXIS 101 (10/30/14).

4-56-102. Procurement commission — Creation.

(a)(1) There is created a procurement commission, which shall consist of the commissioners of general services and finance and administration, and the comptroller of the treasury. The chief procurement officer shall serve as a nonvoting member.

(2) The commission shall adopt a procedure governing its proceedings, and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings.

(3) All departments and agencies shall submit existing rules related to procurement to the commission for the commission's review, comment, and recommendations for any changes to such rules. Prior to forwarding draft rules related to procurement to the secretary of state, all departments shall submit such draft rules to the commission for the commission's review and comment together with any recommendations for changes to such draft rules.

(4) The attorney general and reporter shall serve as legal counsel to the commission in accordance with the requirements of § 8-6-301.

(b)(1) The commission has the power and authority, except as otherwise provided in this chapter, to review, comment, and approve draft rules and regulations, policies, standards, and procedures to be followed consistent with this chapter and title 12, chapters 3 and 4, and to make recommendations for changes thereto, governing the procurement of goods and services, contracting, agency contract and grant management, training and professional development, and the disposal of goods and services by the state.

(2) The commission is authorized to promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, as well as policies and procedures to implement this chapter.

(3) The commission shall not exercise authority over the award or administration of any particular contract or grant.

History.

Acts 2011, ch. 295, § 2; 2013, ch. 403, § 1.

Compiler's Notes.

The state procurement commission, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Acts 2010, 1098, § 1, purported to enact this section effective October 1, 2011. Acts 2011, ch. 295, § 2 deleted the section effective May 27, 2011, and enacted this section instead, effective April 1, 2012.

Acts 2013, ch. 403, § 83 provided that the act, which amended subdivisions (a)(2) and (b)(1), shall apply to contracts entered into or renewed on and after July 1, 2013.

4-56-103. Proposed rules related to procurement — State protest committee — Creation — Commission's authority — Appeals.

(a) **Creation of Committee.**

(1) There is created a state protest committee, which shall consist of the commissioners of general services and finance and administration, and the treasurer.

(2) The committee shall adopt procedures governing its operations. The chief procurement officer shall keep a permanent and accurate record of the documents submitted to the committee regarding protests of solicitations. The commissioner of finance and administration shall keep a permanent and accurate record of the minutes, procedures, and proceedings of the committee.

(3) If a member is not available to hear a scheduled protest, the member

is authorized to appoint a designee to hear the scheduled protest on the member's behalf.

(b) **Appeals to Committee.**

(1) The committee is authorized to act on any appeal of the chief procurement officer's decision of a protest.

(2) Any committee member whose department is the requestor of a procurement or the resulting contract may not hear the protest.

(3) The chief procurement officer shall provide the minutes of the protest proceedings to each committee member and to the comptroller of the treasury and shall post the final determination within fifteen (15) business days to the single public procurement website.

History.

Acts 2011, ch. 295, § 3; 2013, ch. 403, § 2; 2021, ch. 279, § 2.

Compiler's Notes.

Acts 2010, 1098, § 1, purported to enact this section effective October 1, 2011. Acts 2011, ch. 295, § 3 deleted the section effective May 27, 2011, and enacted this section instead, effective April 1, 2012.

Acts 2013, ch. 403, § 83 provided that the act, which amended this section, shall apply to contracts entered into or renewed on and after July 1, 2013.

The state protest committee, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

Amendments.

The 2021 amendment substituted "The chief procurement officer shall keep a permanent and accurate record of the documents submitted to the committee regarding protests of solicitations. The commissioner of finance and administration shall keep a permanent and accurate record of the minutes, procedures, and proceedings of the committee." for ", and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings" in (a)(2).

Effective Dates.

Acts 2021, ch. 279, § 6. May 3, 2021.

4-56-104. Procurement office — Creation — Chief procurement officer — Personnel — Contracts and contract rights and responsibilities — Adoption of operational procedures.

(a) There is created a procurement office headed by the chief procurement officer in such department as the governor shall designate, after consulting with the comptroller of the treasury, which shall take effect as provided in subsection (b).

(b) Effective July 1, 2011, the governor shall appoint the chief procurement officer, who shall be a person:

(1) Qualified by training and relevant and recent experience in large scale public procurement of goods and services, establishment of contracts, contract oversight, providing training and contract administration, and demonstrated executive and organizational ability to perform the duties of this office; and

(2) Qualified by training or relevant and recent experience in administering programs to encourage and enhance economic opportunities for small businesses and minority-owned businesses.

(c) The chief procurement officer shall be a full-time public official of the state as an executive service employee appointed by the governor to serve at the pleasure of the governor.

(d)(1) Necessary personnel in the department of general services involved in the procurement of goods and necessary personnel in the department of

finance and administration involved in the procurement of services, as required by the procurement officer, shall be transferred to the procurement office together with the funding for the compensation and benefits for such personnel.

(2) The chief procurement officer is authorized to employ such additional personnel as are necessary to carry out the purposes of this chapter, upon the approval of the governor.

(3) The compensation of employees of the procurement office shall be fixed by the governor.

(e)(1) All contracts and contract rights and responsibilities, and renewals for such contracts, in existence with the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be preserved and transferred to the procurement office.

(2) Any bidding procedure or negotiations concerning any such procedure which is in the process but not complete shall continue under the purview of the procurement officer.

(3) All documents, books, records, papers or other writings in the possession of the department of general services and the department of finance and administration with respect to the duties transferred by this section shall be transferred to and remain in the custody of the procurement office.

(4) Any rules, regulations, orders, decisions and policies formerly issued or promulgated by the departments of finance and administration or general services whose functions have been transferred under this section to the procurement office shall remain in full force and effect and shall hereafter be administered and enforced by the procurement officer. The commission shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies formerly issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

(f) Subject to this chapter and other procurement laws under the jurisdiction of the chief procurement office, the chief procurement officer may adopt operational procedures governing the internal functions of the procurement office.

History.

Acts 2010, ch. 1098, § 1; 2011, ch. 295, §§ 5, 6; 2012, ch. 537, §§ 1-4; 2013, ch. 403, § 3.

Compiler's Notes.

Acts 2013, ch. 403, § 83 provided that the act, which amended this section, shall apply to contracts entered into or renewed on and after July 1, 2013.

4-56-105. Powers and duties of chief procurement officer.

The chief procurement officer has the power and duty to:

(1) Effective January 1, 2012, establish a single, public procurement website that includes how to do business with the state; registration for

bidders; posting of all procurements in process and related status to award; and a database of established contracts by state agencies, departments and institutions;

(2) Effective April 1, 2012, develop a transition plan that provides for the implementation by date and action to consolidate the procurement and contracting for goods, services and grants; to include employee job classifications for the state procurement office and agency procurement functions that include development and training plans and other plans as prescribed and approved by the commission;

(3) Develop and propose to the general assembly any changes required to consolidate statutes;

(4) Develop proposed rules and regulations, policies, standards and procedures consistent with this chapter and title 12, chapters 3 and 4 and approved by the commission that establish:

(A) A central procurement process with opportunities for strategic sourcing;

(B) A central contract management process;

(C) A central grant management process that will assist agencies in identifying grant opportunities and provide for a central database of information regarding grant recipients and sub-recipients for monitoring purposes;

(D) A central performance and quality assurance process that assists agencies in identifying risk areas and recommending contract performance and management best practices; and

(E) A central bidder relations management process to include a central bidder registration database and program for conducting business with the state, which provides bidders and vendors with training and assistance with technical matters, procurement notification, and contract and grant awards;

(5) Develop and conduct training to foster professional development and certification for the state procurement office and agency procurement staff to promote procurement excellence, either independently or in cooperation with other state governments, municipalities or other units of local government, or other persons. In conducting this training, the chief procurement officer shall:

(A) Prescribe professional and accountability standards and guidelines for procurement, contract, grant, performance and quality assurance management personnel;

(B) Conduct or participate in procurement education and training programs;

(C) Conduct research into existing and new methods of procurement; and

(D) Establish and maintain an electronic library of education and training courses and technical reference resources;

(6) Delegate authority to designees or to any department, agency, or official, subject to additional approvals including approval by the comptroller of the treasury and such other requirements as prescribed in rules, regulations, standards, policies and procedures approved by the commission;

(7) Establish and maintain agenda and minutes of the commission and the council and all actions of both, which shall be open to public inspection during regular office hours and on the single public procurement website in accordance with bylaws established by the council and commission. The chief procurement officer shall chair the council. Except as otherwise indicated, all requirements of this section shall be ready for implementation by the chief procurement officer by April 1, 2012;

(8) Prescribe the manner in which goods and services shall be purchased, delivered, stored and distributed;

(9) Require periodic reports by departments, institutions and agencies of state government of stocks of supplies, materials, and equipment on hand and prescribe the form of such reports;

(10) Prescribe the dates for making requisitions and estimates, the periods for which they are to be made and the manner of authentication;

(11) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment and of making chemical and physical tests of samples submitted with solicitation responses, and sample deliveries to determine whether deliveries have been made to departments, institutions, and agencies in compliance with specifications;

(12) Prescribe the manner for the handling and processing of specifications, estimates, requisitions, solicitations, responses to solicitations, and all reports made and required to be made to the department;

(13) Prescribe the manner in which respondents may qualify and show responsibility in compliance;

(14) Prescribe the manner for responding to solicitations on lease-purchase contracts and multi-year contracts for the rental of personal property;

(15) Prescribe the manner that provides for and regulates the advertisement, soliciting, and letting of state contracts that include escalator clauses;

(16) Resolve controversies concerning protests of qualification of respondents, suspension from competing, solicitations, and stay of award prior to actual award;

(17) Prescribe the manner for conducting discussions and negotiations, particularly with respect to participants and safeguarding of information, for all solicitation types;

(18) Prescribe the process to be followed in making data available to respondents of solicitations;

(19) Prescribe the process to be followed by agencies in requisitioning goods or services through the central procurement office; and

(20) Provide for any other matters that may be necessary to give effect to the powers and duties of the chief procurement officer under this section by rules and regulations, standards, policies and procedures approved by the commission.

History.

Acts 2010, ch. 1098, § 1; 2011, ch. 295, §§ 5, 7, 8; 2012, ch. 537, §§ 5, 6; 2012, ch. 626, §§ 1, 2; 2013, ch. 403, § 4.

Compiler's Notes.

Acts 2013, ch. 403, § 83 provided that the act, which amended this section, shall apply to contracts entered into or renewed on and after July 1, 2013.

Attorney General Opinions.

Applicability of procurement requirements when providing grants and entering into agree-

ments to assist impaired professionals pursuant to T.C.A. § 63-1-136; applicability to grant contracts for peer assistance issued by health-related regulatory boards under T.C.A. § 63-1-136. OAG 14-98, 2014 Tenn. AG LEXIS 101 (10/30/14).

4-56-106. Advisory council on state procurement — Creation.

(a)(1) Effective November 1, 2011, there is created an advisory council on state procurement. There shall be five (5) voting members of the council. There shall be seven (7) nonvoting members of the council representing the proposer and vendor community and other procurement professionals. All members shall have a demonstrable working knowledge of the state procurement process. In making the appointments to the advisory council, the appointing authorities shall give due consideration to the need for geographic, age, racial, gender, and ethnic diversity on the council.

(2) The five (5) voting members of the council shall consist of one (1) representative of state agencies appointed by the commissioner of general services, one (1) representative from the department of general services to be appointed by the commissioner of general services, one (1) representative from the department of finance and administration to be appointed by the commissioner of finance and administration, one (1) representative from the office of the comptroller of the treasury to be appointed by the comptroller of the treasury, and the chief procurement officer who shall serve as chair. The initial appointments by the commissioners shall be made prior to November 1, 2011. The initial appointment by the comptroller of the treasury shall be made prior to November 1, 2011. Any vacancy shall be filled for the unexpired term by the appointing authority making the initial appointment. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms.

(b)(1) Voting members appointed by the commissioner of general services shall serve a staggered four-year term, beginning November 1, 2011. These voting members of the council shall, upon expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed.

(2)(A) The terms shall be staggered so that the terms of only two (2) voting members shall terminate at the same time.

(B) The term of one (1) voting member initially appointed by the commissioner of general services and the voting member appointed by the commissioner of finance and administration shall be for a two-year term to begin on November 1, 2011, to expire on October 31, 2013, and the successors shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(C) The term of the other voting member initially appointed by the commissioner of general services shall be for a three-year term to begin on November 1, 2011, to expire on October 31, 2014, and the successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(D) The chief procurement officer shall be an ex officio member whose term shall begin November 1, 2011.

(E) The one (1) voting member appointed by the comptroller of the

treasury shall be appointed for a four-year term to begin on November 1, 2011, to expire on October 31, 2015. The successor shall serve a four-year term to begin on November 1, and expire October 31 of the appropriate year.

(3) Proxy voting is prohibited by voting members of the council; provided, however, that, in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote.

(4)(A) Any voting member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the council.

(B) The presiding officer of the council shall promptly notify, or cause to be notified, the appointing authority of any voting member who fails to satisfy the attendance requirement as prescribed in subdivision (b)(4)(A).

(c) Except as provided in subsections (a) and (b), the seven (7) nonvoting members shall be selected to serve staggered four-year terms as follows:

(1) The speaker of the house of representatives, the speaker of the senate, and the governor shall each appoint two (2) representatives, with one (1) representative from the bidder or vendor community and one (1) representative recommended by the National Institute of Government Purchasing. The final advisory nonvoting member appointment shall be appointed by the chair of the fiscal review committee. The initial appointments to the council shall be made prior to November 1, 2011, by the speaker of the senate and the speaker of the house of representatives. The pattern established for initial appointments shall be followed for appointments by the appropriate officials when appointments are to fill expired terms;

(2) The nonvoting member appointed by the chair of the fiscal review committee shall serve a two-year term, beginning November 1, 2011, until the term expires October 31, 2013. The nonvoting member appointed by the chair of fiscal review shall be eligible for reappointment to succeeding two-year terms without limitation; the two-year term of office of successor appointees shall begin November 1, and expire October 31 of the appropriate year; and

(3) The initial appointments of the nonvoting members shall be staggered. The speaker of the senate and the speaker of the house of representatives shall each initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014; and the governor shall initially appoint one (1) member for a two-year term to begin November 1, 2011, and expire October 31, 2013, and one (1) member for a three-year term to begin November 1, 2011, and expire October 31, 2014. All subsequent appointments shall be for a four-year term to begin November 1, and expire October 31 of the appropriate year.

(d) Except as provided in subdivision (c)(1)(B), each nonvoting member of the council, upon expiration of the member's term, shall not be eligible for reappointment for two (2) years after the conclusion of that member's term. In no event shall a nonvoting member of the council serve more than four (4) consecutive years as a nonvoting member of the council. In the event a member

resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(e) No employer shall discriminate in any manner against an employee who serves on the council because of the employee's service on the council. Employees who serve on the council shall not be denied any benefit from their employer because of the employee's service on the council.

(f) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The council shall meet at least twice each year for the discussion of problems and recommendations for improvement of the procurement process or any other matter relevant to procurement as determined by the chief procurement officer.

(h) The council shall review and issue a formal comment approved by the council on procurement policies, standards, guidelines, and procedures established by the chief procurement officer prior to being presented for approval by the commission. All reviews and formal comments shall be issued within sixty (60) days of being presented to the council by the chief procurement officer. The formal comments approved by the council shall be provided to the members of the commission, and the officers of the fiscal review committee.

(i) When requested by the chief procurement officer, the council may conduct studies, research, analyses, and make reports and recommendations with respect to subjects or matters within the authority and duties of the chief procurement officer. The chief procurement officer may appoint advisory groups to assist in specific areas, and with respect to any other matters within the authority of the chief procurement officer.

(j) In performing its responsibilities, the council's role shall be strictly advisory, but it may do any of the following:

(1) Make recommendations to the governor, general assembly, fiscal review committee, commissioner of general services, commissioner of finance and administration, and comptroller of the treasury relating to the enactment or promulgation of laws or rules that affect this title and title 12, chapters 3 and 4;

(2) Make recommendations to the commissioner of general services and commissioner of finance and administration regarding the method and form of statistical data collections; and

(3) Monitor the performance of the chief procurement office in the implementation of legislative directives.

(k) The council may develop evaluations, statistical reports, and other information from which the general assembly may evaluate the impact of legislative changes to procurement laws.

(*l*) Whenever any bill is introduced in the general assembly proposing to amend this chapter, to make any change in public procurement or contract law, or to make any change in the law that may have a financial or other substantive impact on the administration of public procurement and contract law, the standing committee to which the bill is referred may refer the bill to

the council. The council's review of bills relating to procurement and contract law shall include, but not be limited to, bills that propose to amend this chapter and title 12, chapters 3 and 4. All bills referred to the council shall be reported back to the standing committee to which they were assigned in a reasonable time. Notwithstanding the absence of a report from the council, the standing committee may consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the bill of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors of the bill have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the procurement and contract process and its operations and any other information or suggestions that the council may determine to be helpful for the sponsors, standing committees, or the general assembly. The comments of the council may include recommendations concerning the proposed legislation. Except for reporting the recommendations for or against passage of proposed bill and responding to any inquiries made by the members of the general assembly, council staff shall not lobby or advocate for or against passage of any proposed legislation.

History.

Acts 2011, ch. 295, § 4; 2012, ch. 537, § 7; 2013, ch. 403, § 5; 2020, ch. 671, § 3.

Compiler's Notes.

Acts 2010, 1098, § 1, purported to enact this section effective October 1, 2011. Acts 2011, ch. 295, § 4 deleted the section effective May 27, 2011, and enacted this section instead, effective November 1, 2011.

Acts 2010, ch. 1098, § 4 purported to transfer § 12-4-109(a)(1)(G)-(J) to this section, effective October 1, 2011; however, Acts 2011, ch. 295, § 21 deleted Acts 2010, ch. 1098, § 4, effective May 27, 2011, and Acts 2011, ch. 295, § 22 deleted § 12-4-109(a)(1)(G)-(J), effective April 1, 2012.

Acts 2013, ch. 403, § 83 provided that the act, which amended this section, shall apply to contracts entered into or renewed on and after July 1, 2013.

The advisory council on state procurement, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

4-56-107. Requests for noncompetitive contracts to fiscal review committee — Review by the fiscal review committee — Exceptions to requests — Reports.

(a)(1) All requests of the procuring agency to procure goods or services through a noncompetitive contract must be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury, and the chief procurement officer. For purposes of this section, "noncompetitive contract" includes any procurement arrangement, including, but not limited to, a grant or contract, but does not include a grant or contract awarded to a:

(A) Public institution of higher education to procure research or public service-related goods or services; or

(B) Governmental entity, including, but not limited to, a local government.

(2) If review is required pursuant to subsection (a), the procuring agency shall provide the request to the fiscal review committee, which must include the following:

(A) Description of the goods or services to be acquired;

(B) Explanation of the need for or requirement to acquire the goods or services;

(C) Name and address of the proposed contractor's principal owner;

(D) Evidence that the proposed contractor has experience in providing the same or similar goods or services and evidence of the length of time the contractor has provided the same or similar goods or services;

(E) Explanation of whether the goods or services were purchased by the procuring agency in the past and, if applicable, the method used to purchase the goods or services and the name and address of the contractor;

(F) Description of the procuring agency's efforts to use existing state employees and resources or, in the alternative, to identify reasonable and competitive procurement alternatives, rather than to use noncompetitive negotiation;

(G) Justification of why the goods or services should be acquired through noncompetitive negotiation; and

(H) Any additional information that the fiscal review committee may direct the procuring agency to provide that will assist the committee in evaluating the contract.

(b)(1) The following contracts and contract amendments shall be subject to review by the fiscal review committee:

(A) Proposed noncompetitive contracts with a term of more than one (1) year or which contain a provision to allow for extension by either party that would extend the contract beyond twelve (12) months and which have a cumulative value of not less than two hundred fifty thousand dollars ($250,000), including all possible extensions; and

(B) Any amendment to a contract meeting the term and dollar threshold requirements as described in subdivision (b)(1)(A), regardless of whether the original contract was procured through competitive or noncompetitive means, where the amendment:

(i) Increases or decreases the maximum liability;

(ii) Extends or shortens the contract term;

(iii) Changes the entity or name of the entity with which the state is contracting; or

(iv) Otherwise changes an original contract or amended contract in a substantive manner.

(2) If the chief procurement officer or delegated state agency is unable to determine whether a proposed contract or amendment would be subject to review by the fiscal review committee, the chief procurement officer or delegated state agency shall contact the fiscal review committee staff for a determination.

(3) The contracts subject to review shall include all contracts of the executive branch that otherwise meet the requirements of subdivision (b)(1), including, but not limited to, contracts of higher education, including the board of regents, the University of Tennessee, and the Tennessee higher education commission. Highway and road improvement contracts reviewed by the department of transportation, contracts reviewed by the state building commission and debt issuance contracts reviewed by the comptroller of the treasury shall not be subject to this review.

(4) The fiscal review committee, pursuant to its jurisdiction under § 3-7-103(a), is authorized to review any other state contract or contract amend-

ment in accordance with the procedures established in this section without regard to whether the contract or contract amendment meets the requirements of subdivision (b)(1).

(5)(A) The fiscal review committee shall have forty (40) business days from receipt of the request as provided in this section to comment on the proposed contract. After this forty-day period, any such contract authorized by the chief procurement officer may be executed. All other requests to negotiate noncompetitive contracts shall be reviewed by the fiscal review committee after approval by the chief procurement officer. With respect to such requests, the fiscal review committee shall be provided the same information to be submitted in accordance with subsection (a). The chair or the chair's designee, after consultation with the comptroller of the treasury, shall have authority to waive the forty-day period for comment and authorize the chief procurement officer to execute contracts or amendments that are determined to be in the best interest of the state, and to proceed with reporting and comment by the committee at their next scheduled meeting.

(B) If an exception is granted to any request, approved in accordance with subdivision (a)(1) or rules promulgated pursuant to § 4-56-103, then any such exception shall be filed with the fiscal review committee for its perusal, comment and review.

(C) The procurement office shall file a goods and services contract report quarterly with the fiscal review committee. The report shall list contracts approved in accordance with rules authorized by § 4-56-103 during the prior quarter and detail whether each contract procurement was competitive.

(D) Each procuring agency granted a special delegated authority, pursuant to rules authorized by § 4-56-105, to establish goods and services contracts shall report to the fiscal review committee a list of all contracts awarded under the delegated authority. The list of contracts awarded shall be filed quarterly and shall include the contractor name, contract period, contract amount, method used to select the contractor, and the completion date for a monitoring review, as defined by any applicable policy developed by the chief procurement officer and any other information the procuring agency wishes to include.

(E) The department of transportation shall report to the fiscal review committee on approved highway and road improvement contracts that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The fiscal review committee shall have the option to conduct a separate hearing on highway and road improvement contracts approved by the department of transportation.

(F) The state building commission shall report to the fiscal review committee on contracts it has approved that would otherwise meet the requirements of subdivision (b)(1) within thirty (30) days of approval, including all of the information specified in subsection (a) and any other information the committee deems necessary or helpful. The committee

shall have the option to conduct a separate hearing on contracts approved by the building commission.

(c)(1) No later than the first business day of each calendar month, the chief procurement officer shall report to the director of the fiscal review committee the following information for the prior calendar month:

(A) An itemized listing of all contracts, grants, or any other noncompetitive procurement means that were awarded the previous month; and

(B) Any policy, procedure, or rule change to the state procurement processes planned for the following month.

(2) The reports required pursuant to subdivision (c)(1) must include the name of the department or agency for which the procurement is being made, the name and contact information for the vendor, identification of the goods or services being procured, the term on the procurement method, as well as any expenditures and revenue associated with the procurement.

History.

Acts 2010, ch. 1098, § 1; 2011, ch. 295, §§ 5, 20; 2012, ch. 673, § 2; Acts 2013, ch. 403, § 6; T.C.A. § 4-56-108; Acts 2021, ch. 562, §§ 2, 3.

Compiler's Notes.

Former § 4-56-107 (Acts 2010, ch. 1098, § 1; 2010, ch. 1135, § 12; 2011, ch. 295, § 5), concerning the authority of the comptroller of the treasury to examine procurement contracts, grants and other documents, was repealed by Acts 2013, § 403, § 6, effective July 1, 2013.

Former § 4-56-108 was transferred to this section by Acts 2013, ch. 403, § 6, effective July 1, 2013.

Acts 2013, ch. 403, § 83 provided that the act, which repealed former § 4-56-107 and transferred former § 4-56-108 to this location, shall apply to contracts entered into or renewed on and after July 1, 2013.

Acts 2021, ch. 562, § 7 provided that the act, which amended this section, applies to procurements and actions related to procurements occurring thirty (30) days after May 26, 2021.

Amendments.

The 2021 amendment redesignated the former introductory language of (a) as (a)(1); rewrote present (a)(1) which read: "All requests of the procuring agency to procure goods or services by negotiation with a single service provider, referred to in this section as a noncompetitive contract, shall be contemporaneously filed with the fiscal review committee of the general assembly, comptroller of the treasury and the chief procurement officer. Such requests shall document the following:"; redesignated former (a)(1)—(a)(8) as (a)(1)(A)—(a)(1)(H); and added (c).

Effective Dates.

Acts 2021 ch. 562, § 7. May 26, 2021.

4-56-108. Review and approval by the comptroller of the treasury — Examination of documents— Documentation of the cancellation of procurements or rejection of all responses to a procurement — Protests — Executed documents — Posting of reports.

(a) The comptroller of the treasury shall review and approve such procurements, contracts, grants, and other related documents prior to the public posting on the single procurement website of such procurements; prior to posting any amendments thereto; after recommendation for award; and prior to execution of the contract as applicable for the following:

(1) Delegation of procurement or contract authority by the chief procurement officer. All initial, reduced or revoked delegations as provided under § 12-3-401 shall be reported to the comptroller of the treasury in such format and time interval as reasonable. All periodic reviews of purchasing activities of any state agency granted such delegation shall be provided to the comptroller of the treasury;

(2) Procurement and contracts for goods and services where authority exists under both the state building commission and the central procurement office to procure and contract;

(3) Procurement and contracts for auditing services;

(4) Cooperative agreement to participate, sponsor, conduct or administer as provided in § 12-3-512 with any other entity with an estimated liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(5) Fee for service procurement or contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(6) Grant contracts with a maximum liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission;

(7) Fee for service procurement or contracts for new or replacement information systems and technical infrastructure projects for goods and services in excess of five hundred thousand dollars ($500,000), which may be increased or decreased by action of the commission;

(8) Procurement or contracts that would utilize competitive or noncompetitive negotiations with a maximum liability in excess of two hundred fifty thousand dollars ($250,000), which may be increased or decreased by action of the commission. Competitive or noncompetitive negotiation shall not be utilized by a state agency unless such procurement is performed by the central procurement office;

(9) Procurement or contracts for which the state would receive revenue;

(10) Procurement or contracts that would incur no cost;

(11) Procurement or contracts that propose a term that exceeds sixty (60) months;

(12) Procurement or contracts that propose a limitation of liability that is less than two (2) times the maximum liability;

(13) Procurement or contracts that propose to change the records, annual report and audit or monitoring provisions;

(14) [Deleted by 2021 amendment.]

(15) Procurement that would provide that a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal;

(16) Procurement or contract that provides an automatic price escalator; and

(17) Such other procurements, contracts or other items as may be directed by the commissioner of finance and administration or by the commission.

(b) Without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

(c) Cancellation of procurements or rejection of all responses to a procurement shall be documented in accordance with rules and regulations, standards, policies and procedures as approved by the commission and the reason for the cancellation or rejection of all bids for a procurement shall be provided to the comptroller of the treasury within three (3) business days after such determination.

(d) Any protest after notice of intent to award by an aggrieved respondent received by the chief procurement officer or the protest committee shall be filed with the comptroller of the treasury within three (3) business days of receipt. All responses to the aggrieved respondent regarding the protest whether allowed or not, shall be filed with the comptroller of the treasury at the same time provided to the aggrieved respondent.

(e) Contracts shall contain on the last page of the secured contract document the signature and approval date of all required approvers to be a fully executed document and for the release of a purchase order against the contract.

(f) The comptroller of the treasury shall be provided view access to any information or data from any system housing procurement and contract related data, information, and processes.

(g) The chief procurement officer shall post on the single procurement website reports or data queries, subject to approval by the comptroller of the treasury as to format and time interval for update. Such reports shall include, but are not limited to, the following:

(1) Noncompetitive, sole source or proprietary contracts;

(2) Cancellation of procurements or contract awards;

(3) Cancellation of contracts before term extension or for cause;

(4) Protests to chief procurement officer and protest committee;

(5) Emergency procurements and contracts;

(6) Contracts with term extensions beyond sixty (60) months;

(7) Rule exceptions approved by the chief procurement officer; and

(8) Persons or entities that are prevented from contracting or submitting a response to a procurement.

History.

Acts 2013, ch. 403, § 7; 2021, ch. 193, §§ 1-3.

Compiler's Notes.

Former § 4-56-108 was transferred to § 4-56-107 by Acts 2013, ch. 403, § 6, effective July 1, 2013.

Acts 2013, ch. 403, § 83 provided that the act, which enacted this section, shall apply to contracts entered into or renewed on and after July 1, 2013.

Amendments.

The 2021 amendment substituted "prior to posting any amendments thereto" for "after posting any amendments thereto" in (a); added "with an estimated liability in excess of five million dollars ($5,000,000), which may be increased or decreased by action of the commission" at the end of (a)(4); and deleted (a)(14) which read: "(14) Procurement or contracts that would provide for the negotiation of a necessary, mandatory or standard contract clause;".

Effective Dates.

Acts 2021, ch. 193, § 4. April 22, 2021.

4-56-109. Vendor indictment of Antitrust Act — Notice — Fine — Contract termination.

(a) As used in this section, "vendor" means a legal entity that:

(1) Is currently under contract with a department or agency of this state;

(2) Bids on a contract with a department or agency of this state; or

(3) Attempts to amend a current contract with a department or agency of this state.

(b) If a vendor is indicted for or convicted of, or pleads guilty or nolo contendere to, any violation under the Sherman Antitrust Act (15 U.S.C. §§ 1-7); mail fraud under 18 U.S.C. § 1341; any federal or state criminal

statute in connection with any contract let or funded, in whole or in part, by this state or any other state or territory of the United States; or any federal or state crime as the result of any investigation into such violations or crimes, the vendor shall provide notice of such indictment, conviction, or plea to the chief procurement officer by submitting a copy of the indictment, final judgment of conviction, or plea agreement to the chief procurement officer not later than thirty (30) days after being indicted, convicted, or pleading guilty or nolo contendere.

(c) Upon receiving notice under subsection (b), the chief procurement officer shall forward a copy of the indictment, final judgment of conviction, or plea agreement to the executive director of fiscal review and the comptroller of the treasury.

(d) If a vendor knowingly fails to provide notice under subsection (b), the chief procurement officer may fine the vendor ten thousand dollars ($10,000); provided, that, if the vendor is under contract and the total price of the contract is greater than two hundred thousand dollars ($200,000), the chief procurement officer may fine the vendor in an amount not to exceed five percent (5%) of the total price of the contract.

(e) A department or agency of this state may terminate any contract with a vendor who is found to be in violation of this section.

History.
Acts 2016, ch. 730, § 1.

Compiler's Notes.
Former § 4-56-109 (Acts 2010, ch. 1098, § 1; 2011, ch. 295, § 5; repealed by Acts 2013, ch. 403, § 7, effective July 1, 2013) concerned the chapter being supplemental to other law and conflicts of interest.

Acts 2016, ch. 730, § 2 provided that the act, which added this code section, shall take effect July 1, 2016; provided, that subsection (e) shall apply only to contracts entered into on or after July 1, 2016.

CHAPTER 57

TENNESSEE STATE FAIR AND EXPOSITION ACT

Section
4-57-101. Short title.
4-57-102. Legislative intent.
4-57-103. Chapter definitions.
4-57-104. State fair and exposition commission.
4-57-105. Authority and powers of the commission.
4-57-106. Use of the name "Tennessee State Fair" or "Tennessee State Exposition".
4-57-107. State audit included as part of the department of agriculture audit.

4-57-101. Short title.

This chapter shall be known and may be cited as the "Tennessee State Fair and Exposition Act."

History.
Acts 2012, ch. 1047, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Attorney General Opinions.
The Tennessee State Fair and Exposition Act's regulation of the use of the name "Tennes-

see State Fair" does not infringe any constitutional right of the board of fair commissioners of the metropolitan government of Nashville and Davidson County even if the name has been registered as a trademark. OAG 13-57, 2013 Tenn. AG LEXIS 57 (7/22/13).

4-57-102. Legislative intent.

It is the intent of the general assembly that the commission created herein shall be the sole body in Tennessee charged with administering a state fair and exposition.

History.
Acts 2012, ch. 1047, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

4-57-103. Chapter definitions.

For the purposes of this chapter unless the context otherwise requires:

(1) "Commission" means the Tennessee state fair and exposition commission;

(2) "Commissioner" means the commissioner of agriculture;

(3) "Department" means the department of agriculture;

(4) "Exhibition" means one (1) or more displays or demonstrations which are of educational or entertainment value to those witnessing such exhibition; and

(5) "Fair" or "exposition" means an exhibition of agricultural, business, manufacturing, or other industries and labor, education service organizations, social and religious groups or any other events or activities consistent with the general welfare and interests of the people of the state, and includes such services as are necessary for the care and comfort or amusement of the public. Such services include rest areas, sanitary and other such comforts, and concessions for food, drink, amusements, and the sale of trinkets.

History.
Acts 2012, ch. 1047, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

4-57-104. State fair and exposition commission.

(a) Notwithstanding any other law to the contrary establishing a state fair board, there is hereby created a state fair and exposition commission which shall be composed of the following members to be appointed by the governor:

(1) The dean of the University of Tennessee extension;

(2) The president of the Tennessee Farm Bureau;

(3) The state advisor of the Future Farmers of America;

(4) The executive director of the Tennessee Association of Fairs;

(5) The chair of the Tennessee State Fair Association;

(6) The commissioner of agriculture; and

(7) The dean of the Tennessee State University, college of agriculture cooperative extension program.

(b) Within sixty (60) days of creation of the commission, the commission members shall establish by rule a method of selecting a chair for the commission and shall select a chair. The chair shall serve a two-year term but shall be limited to no more than two (2) consecutive terms. Commission members shall serve on the commission as long as the member holds the position the member held at the time of initial appointment.

History.
Acts 2012, ch. 1047, § 1; 2018, ch. 1014, § 1; 2019, ch. 342, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Attorney General Opinions.
The Tennessee State Fair and Exposition Act's regulation of the use of the name "Tennessee State Fair" does not infringe any constitutional right of the board of fair commissioners of the metropolitan government of Nashville and Davidson County even if the name has been registered as a trademark. OAG 13-57, 2013 Tenn. AG LEXIS 57 (7/22/13).

4-57-105. Authority and powers of the commission.

The commission is authorized and empowered to:

(1) Advise, facilitate, and coordinate with the Tennessee State Fair Association, a not-for-profit corporation, or Wilson County Promotions, Inc., a not-for-profit corporation, or both, for the purpose of the entities operating, managing, and conducting at least one (1) fair or exposition annually, under the supervision of the commission, with such additional fairs, expositions, or exhibitions as the commission determines are in the general public interest;

(2) Enter into any contracts and agreements necessary and do and perform any acts necessary to carry out the purposes of this chapter;

(3) Maintain and manage property held by the state for the purpose of conducting fairs, expositions, and exhibits;

(4) Accept gifts, contributions and bequests of unrestricted funds from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the objectives of the commission's programs;

(5) Accept on behalf of the state conveyances of property for the purposes of conducting fairs, expositions, and exhibits, subject to any terms and conditions agreed to by the commission;

(6) Sell or convey all or a portion of the property, land, or buildings under its management subject to the approval of the state building commission;

(7) Grant leases on all or any part of the property, land, or buildings under the management of the commission to private or public organizations, which appear to be in the best interests of the state;

(8) Recommend to the commissioner such rules and regulations that should be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in chapter 5 of this title, in order to carry out the purposes of the commission; and

(9) Form advisory panels, as needed, from qualified persons within the state to obtain their advice and counsel on matters pertaining to the state

fair. Members of these panels shall serve at the will and pleasure of the commission and shall receive no compensation.

History.
Acts 2012, ch. 1047, § 1; 2018, ch. 1014, § 2; 2021, ch. 543, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Amendments.
The 2021 amendment in (1), inserted "or Wilson County Promotions, Inc., a not-for-profit corporation, or both," and substituted "for the purpose of the entities" for "for the purpose of the Tennessee State Fair Association".

Effective Dates.
Acts 2021, ch. 543, § 3. May 25, 2021.

4-57-106. Use of the name "Tennessee State Fair" or "Tennessee State Exposition".

The use of the name "Tennessee State Fair" or "Tennessee State Exposition" in Tennessee to denote a fair serving the state shall only be granted by the department of agriculture with the approval of the commission.

History.
Acts 2012, ch. 1047, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Attorney General Opinions.
The Tennessee State Fair and Exposition Act's regulation of the use of the name "Tennessee State Fair" does not infringe any constitutional right of the board of fair commissioners of the metropolitan government of Nashville and Davidson County even if the name has been registered as a trademark. OAG 13-57, 2013 Tenn. AG LEXIS 57 (7/22/13).

4-57-107. State audit included as part of the department of agriculture audit.

The division of state audit shall include as part of its scheduled audit of the department of agriculture a review of the Tennessee state fair and exposition commission including, but not limited to, the commission's authority and function.

History.
Acts 2012, ch. 1047, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

CHAPTER 58

ELIGIBILITY VERIFICATION FOR ENTITLEMENTS ACT

Section
4-58-101. Short title.
4-58-102. Chapter definitions.
4-58-103. Verification of citizenship of applicants for benefits.
4-58-104. Liability for false, fictitious or fraudulent statements or representations.

Section
4-58-105. Filing with United States attorney complaints alleging criminal violations of 18 U.S.C. § 911.
4-58-106. Violation of chapter prohibited — Report on compliance.
4-58-107. Sending to or receiving from naturalization service information regarding immigration status of aliens.
4-58-108. Interpretation consistent with federal and state law.
4-58-109. No limitation regarding application process — Cost of verification.
4-58-110. Limitations on application of chapter.

4-58-101. Short title.

This chapter shall be known and may be cited as the "Eligibility Verification for Entitlements Act."

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.
Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

4-58-102. Chapter definitions.

As used in this chapter:

(1) "Federal public benefit":

(A) Has the same meaning as provided in 8 U.S.C. § 1611; and

(B) Does not mean a benefit listed in 8 U.S.C. § 1611(b);

(2) "Political subdivision" means any local governmental entity, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or any instrumentality of government created by any one (1) or more of the named local governmental entities;

(3) "Qualified alien" means:

(A) A qualified alien as defined by 8 U.S.C. § 1641(b); or

(B) An alien or nonimmigrant eligible to receive state or local public benefits under 8 U.S.C. § 1621(a);

(4) "SAVE program" means the systematic alien verification for entitlements program created pursuant to the federal Immigration Reform and Control Act of 1986 (8 U.S.C. § 1101 et seq.), and operated by the United States department of homeland security, or any successor program thereto;

(5) "SEVIS system" means the student and exchange visitor information system created pursuant to § 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (as amended) (8 USCS § 1372), and operated by the United States department of homeland security, or any successor program thereto;

(6) "State governmental entity":

(A) Means a state agency, department, board, commission, and other body which carries out state functions and programs; and

(B) Does not mean a political subdivision; and

(7) "State or local public benefit":

(A) Means any public benefit as defined in 8 U.S.C. § 1621, that is provided or administered by a state governmental entity or a local health department; and

(B) Does not mean a benefit listed in 8 U.S.C. § 1621(b).

History.

Acts 2012, ch. 1061, § 1; 2013, ch. 120, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.

Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

Attorney General Opinions.

House Bill 660/Senate Bill 635, 110th Gen. Assem. (2017), which would grant the governing body of each state institution of higher education the authority "to determine the qualifications that students must possess to be eligible for payment of in-state tuition and fees," would not permit individual state institutions of higher education to make unlawful aliens eligible for in-state tuition. That action would remain prohibited by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1621. Accordingly, the proposed legislation would not implicate or affect other provisions of federal or state law related to unlawful aliens or postsecondary education benefits, including the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1623, and the Hope Scholarship, and Tennessee Promise programs. OAG 17-53, 2017 Tenn. AG LEXIS 55 (12/6/2017).

The Eligibility Verification for Entitlements Act (EVEA) can be read in harmony with laws requiring licensure applicants to be U.S. citizens or U.S. citizens or resident aliens and therefore did not impliedly repeal those laws. State laws requiring licensure applicants to be U.S. citizens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. State laws requiring licensure applicants to be U.S. citizens also violate the Equal Protection Clause because they discriminate based on alienage and would not satisfy strict scrutiny. State laws requiring licensure applicants to be U.S. citizens or resident aliens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. Laws requiring licensure applicants to be U.S. citizens or resident aliens do not violate the Equal Protection Clause, however, because they discriminate only against unlawful aliens and lawful aliens who are not permanent residents. Those categories of aliens are not a suspect class, and the laws at issue would likely satisfy rational basis review. The Department of Commerce and Insurance is not required to enforce the requirements that an applicant for licensure, registration, or certification be a "citizen of the United States" or a "citizen of the United States or resident alien." OAG 18-42, 2018 Tenn. AG LEXIS 42 (9/13/2018).

4-58-103. Verification of citizenship of applicants for benefits.

(a) Except where prohibited by federal law, every state governmental entity and local health department shall verify that each applicant eighteen (18) years of age or older, who applies for a federal, state or local public benefit from the entity or local health department, is a United States citizen or lawfully present in the United States in the manner provided in this chapter.

(b)(1) As provided in subdivision (b)(2), every state governmental entity or local health department shall include on all forms, electronic or otherwise, and all automated phone systems, a written or verbal statement:

(A) Requiring an applicant for a federal, state or local public benefit to, under penalty of perjury, attest to the applicant's status as either:

(i) A United States citizen; or

(ii) A qualified alien; and

(B) Describing the penalties for violations of this chapter.

(2) Subdivision (b)(1) shall be implemented upon the entity's or local health department's first reprinting of applicable forms or updating of the electronic or automated phone systems, described in subdivision (b)(1), after October 1, 2012.

(c) For an applicant who claims United States citizenship, the entity or local health department shall make every reasonable effort to ascertain verification of the applicant's citizenship, which may include requesting the applicant to present any one (1) of the following:

(1)(A) A valid Tennessee driver license or photo identification license issued by the department of safety; or

(B) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;

(2) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this subdivision (c)(2);

(3) A United States government-issued certified birth certificate;

(4) A valid, unexpired United States passport;

(5) A United States certificate of birth abroad (DS-1350 or FS-545);

(6) A report of birth abroad of a citizen of the United States (FS-240);

(7) A certificate of citizenship (N560 or N561);

(8) A certificate of naturalization (N550, N570 or N578);

(9) A United States citizen identification card (I-197, I-179);

(10) Any successor document of subdivisions (c)(4)-(9); or

(11) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.

(d)(1) For an applicant who claims qualified alien status, the applicant shall present two (2) forms of documentation of identity and immigration status, as determined by the United States department of homeland security to be acceptable for verification through the SAVE program; provided, that no entity or local health department is required to verify such applicant's documents through the SAVE program if two (2) such documents are presented unless otherwise required by federal law.

(2) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in subdivision (d)(1), then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or the SEVIS system.

(e) Each state governmental entity or local health department shall maintain a copy of all documentation submitted by an applicant for verification in a manner consistent with the entity's or local health department's rules, regulations or policies governing storage or preservation of such documentation.

(f)(1) Any document submitted pursuant to subsections (c) or (d) shall be presumed to be proof of an individual's eligibility under this chapter until a final verification is received by the state governmental entity or local health department, and no entity or local health department shall delay the distribution of any federal, state or local benefit based solely on the pendency of final verification.

(2) Upon receipt of a final verification that indicates that the applicant is not a United States citizen or qualified alien, the state governmental entity or local health department shall terminate any recurring benefit, and shall pursue any action applicable against the applicant pursuant to § 4-58-104 or § 4-58-105.

(g) The verification process required by this section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

History.

Acts 2012, ch. 1061, § 1; 2013, ch. 120, §§ 2, 3.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.

Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

Attorney General Opinions.

The Eligibility Verification for Entitlements Act (EVEA) can be read in harmony with laws requiring licensure applicants to be U.S. citizens or U.S. citizens or resident aliens and therefore did not impliedly repeal those laws. State laws requiring licensure applicants to be U.S. citizens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. State laws requiring licensure applicants to be U.S. citizens also violate the Equal Protection Clause because they discriminate based on alienage and would not satisfy strict scrutiny. State laws requiring licensure applicants to be U.S. citizens or resident aliens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. Laws requiring licensure applicants to be U.S. citizens or resident aliens do not violate the Equal Protection Clause, however, because they discriminate only against unlawful aliens and lawful aliens who are not permanent residents. Those categories of aliens are not a suspect class, and the laws at issue would likely satisfy rational basis review. The Department of Commerce and Insurance is not required to enforce the requirements that an applicant for licensure, registration, or certification be a "citizen of the United States" or a "citizen of the United States or resident alien." OAG 18-42, 2018 Tenn. AG LEXIS 42 (9/13/2018).

4-58-104. Liability for false, fictitious or fraudulent statements or representations.

(a) Any natural person eighteen (18) years of age or older who knowingly and willfully makes a false, fictitious or fraudulent statement or representa-

tion under this chapter shall be liable under either:

(1) The Tennessee Medicaid False Claims Act, compiled in §§ 71-5-181 — 71-5-185; or

(2) The False Claims Act, compiled in chapter 18 of this title.

(b) Any natural person who conspires to defraud the state or any local health department by securing a false claim allowed or paid to another person in violation of this chapter shall be liable under § 4-18-103(a)(3).

(c) A state governmental entity or local health department shall file, with the attorney general and reporter of this state, a complaint alleging a violation of subsections (a) or (b), as applicable.

(d) Any moneys collected pursuant to this section shall be deposited with and utilized by the applicable entity or local health department that filed a complaint pursuant to subsection (c). The applicable entity or local health department shall establish a fund for the deposit of such moneys, and shall use such moneys for the sole purpose of enforcing this chapter. Any interest accruing on investments and deposits of the fund shall be credited to such fund, shall not revert to any general fund, and shall be carried forward into each subsequent fiscal year.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.
Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

4-58-105. Filing with United States attorney complaints alleging criminal violations of 18 U.S.C. § 911.

A state governmental entity or local health department shall file, with the United States attorney, a complaint alleging a criminal violation of 18 U.S.C. § 911, for each person who willfully makes a false, fictitious or fraudulent statement or representation of United States citizenship.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.
Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

4-58-106. Violation of chapter prohibited — Report on compliance.

(a) No state governmental entity or local health department shall provide or offer to provide any federal, state or local public benefit in violation of this chapter.

(b) Each entity and local health department, subject to this chapter, shall include in any annual report to the general assembly, as required by law, a report of its compliance with this chapter through June 30 of each year.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.
Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

Attorney General Opinions.
The Eligibility Verification for Entitlements Act (EVEA) can be read in harmony with laws requiring licensure applicants to be U.S. citizens or U.S. citizens or resident aliens and therefore did not impliedly repeal those laws. State laws requiring licensure applicants to be U.S. citizens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. State laws requiring licensure applicants to be U.S. citizens also violate the Equal Protection Clause because they discriminate based on alienage and would not satisfy strict scrutiny. State laws requiring licensure applicants to be U.S. citizens or resident aliens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. Laws requiring licensure applicants to be U.S. citizens or resident aliens do not violate the Equal Protection Clause, however, because they discriminate only against unlawful aliens and lawful aliens who are not permanent residents. Those categories of aliens are not a suspect class, and the laws at issue would likely satisfy rational basis review. The Department of Commerce and Insurance is not required to enforce the requirements that an applicant for licensure, registration, or certification be a "citizen of the United States" or a "citizen of the United States or resident alien." OAG 18-42, 2018 Tenn. AG LEXIS 42 (9/13/2018).

4-58-107. Sending to or receiving from naturalization service information regarding immigration status of aliens.

Unless otherwise provided by federal law, no state governmental entity or local health department shall be prohibited, or in any way restricted, from sending to or receiving from the immigration and naturalization service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

Compiler's Notes.
Acts 2012, ch. 1061, § 3 provided that all affected state governmental entities are authorized to promulgate rules and regulations to effectuate the purposes of the act, which enacted this chapter. All rules and regulations promulgated by a state governmental entity shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

4-58-108. Interpretation consistent with federal and state law.

This chapter shall be interpreted consistently with all federal laws, including, but not limited to, federal laws regulating immigration, labor, and medicaid, and all state laws.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

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Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

Attorney General Opinions.
The Eligibility Verification for Entitlements Act (EVEA) can be read in harmony with laws requiring licensure applicants to be U.S. citizens or U.S. citizens or resident aliens and therefore did not impliedly repeal those laws. State laws requiring licensure applicants to be U.S. citizens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. State laws requiring licensure applicants to be U.S. citizens also violate the Equal Protection Clause because they discriminate based on alienage and would not satisfy strict scrutiny. State laws requiring licensure applicants to be U.S. citizens or resident aliens are preempted to the extent they conflict with a federal law that limits States' authority to determine alien eligibility for state public benefits, including professional and commercial licenses. Laws requiring licensure applicants to be U.S. citizens or resident aliens do not violate the Equal Protection Clause, however, because they discriminate only against unlawful aliens and lawful aliens who are not permanent residents. Those categories of aliens are not a suspect class, and the laws at issue would likely satisfy rational basis review. The Department of Commerce and Insurance is not required to enforce the requirements that an applicant for licensure, registration, or certification be a "citizen of the United States" or a "citizen of the United States or resident alien." OAG 18-42, 2018 Tenn. AG LEXIS 42 (9/13/2018).

4-58-109. No limitation regarding application process — Cost of verification.

(a) Nothing in this chapter shall be interpreted as limiting a state governmental entity or local health department regarding its current application process for administering a federal, state or local public benefit, including, but not limited to, requesting additional information from the applicant or requiring additional verification of eligibility.

(b) The state shall defray the cost to a local health department of verifying each applicant's status for a benefit.

History.
Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

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4-58-110. Limitations on application of chapter.

This chapter shall not apply to:

(1) Any person applying for benefits who:

(A) Lacks the mental capacity to commit perjury under oath; and

(B) Has not been judicially appointed a guardian or conservator;

(2) Legal services provided by a district public defender, court-appointed counsel, or other counsel for indigent services;

(3) Prenatal care administered by the department of health; or

(4) The special supplemental food program for women, infants and children administered by the department of health.

History.

Acts 2012, ch. 1061, § 1.

Code Commission Notes. Acts 2012, ch. 1061, § 1 purported to enact title 4, chapter 57. Title 4, chapter 57 was previously enacted by Acts 2012, ch. 1047, § 1; therefore, the enactment by Acts 2012, ch. 1061, § 1 was designated as title 4, chapter 58 by the code commission.

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Acts 2012, ch. 1061, § 5 provided that the act, which enacted this chapter, shall apply to all applications for benefits submitted to state governmental entities or local health departments on or after October 1, 2012.

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